

**CHAPTER NO. 286**

**SENATE BILL NO. 421**

**By Haynes**

**Substituted for: House Bill No. 1121**

**By McMillan, Maddox, Coleman, DuBois**

AN ACT to amend Tennessee Code Annotated, Title 48, relative to enacting the "Tennessee Revised Limited Liability Company Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 48, is amended by adding the following as new, appropriately designated chapters and parts:

**GENERAL PROVISIONS**

**101. Short Title.**

Chapters [1] – [11] of this title shall be known and may be cited as the "Tennessee Revised Limited Liability Company Act."

**102. Definitions.**

As used in chapters [1] - [11] of this title, the terms set forth in this § [102] have the meanings indicated, unless the context otherwise requires.

(1) "Act" means the Tennessee Revised Limited Liability Company Act set forth at chapters [1] – [11] of this title.

(2) "Annual report" means the form required by § [1017].

(3) "Articles" or "articles of organization" means, in the case of an LLC, articles of organization, taken together with all of the following to the extent they modify, correct, restate or otherwise affect the articles of organization: articles of amendment; articles of correction; certificates of merger and all documents required to be filed with any of the foregoing as part of the formation and continuation of an LLC. In the case of a foreign LLC, "articles" or "articles of organization" includes all documents serving a similar function required to be filed with the secretary of state or other state office of the foreign LLC's jurisdiction of formation.

(4) "Business" includes every trade, occupation, profession, investment activity, and other lawful purpose for gain or the preservation of assets, whether or not carried on for profit.

(5) "Code" means the Internal Revenue Code of 1986, as amended, including all successor provisions to the sections referenced in this Act.

(6) "Director" means an individual, who is vested with authority as a director under § [401(c)].

(7) "Director-managed LLC" means an LLC that is so designated in its articles.

(8) "Distribution" means a direct or indirect transfer of money or other property by an LLC (except for the issuance of its own membership interests or financial rights), with or without consideration, or an incurrence or issuance of indebtedness (whether directly or indirectly, including through a guaranty) to or for the benefit of any of its members or holders of financial rights, as applicable, in respect of membership interests or financial rights. A distribution may be in the form of: an interim distribution under § [305] or a liquidation distribution under § [620]; a purchase, redemption, or other acquisition of its membership interests or financial rights; a distribution of indebtedness (which includes the incurrence of indebtedness, whether directly or indirectly, including through a guaranty, for the benefit of the LLC's members or holders of financial rights, as applicable); or any other transaction. The term "distribution" does not include amounts paid to or for the benefit of members, or holders of financial rights as compensation or benefits for services rendered by them in their capacities as members, holders, officers, managers, directors or agents.

(9) "Entity" includes the following, whether foreign or domestic and whether for profit or not-for-profit: limited liability companies; corporations; unincorporated associations; real estate

investment trusts; statutory or business trusts or associations; estates; general partnerships, limited partnerships, registered or unregistered limited liability partnerships, limited liability limited partnerships or similar organizations; trusts; joint ventures; two (2) or more persons having a joint or common economic interest; and local, municipal, state, United States and foreign governments.

(10) "Family LLC" means an LLC in which at the relevant time, members of the same family hold, in the aggregate, at least fifty percent (50%) of the financial rights in the LLC. The phrase "members of the same family" as used in the preceding sentence means, two (2) or more individuals as to one of whom, referred to below as the "common relative", each of the others bears one of the following relationships:

- (A) A spouse or former spouse of the common relative;
- (B) An ancestor or lineal descendant of the common relative;
- (C) An ancestor of the spouse or former spouse of the common relative;
- (D) A brother or sister of the common relative;
- (E) A lineal descendant of any individual described in subsection (D);
- (F) A spouse or former spouse of any individual described in subsection (B), (C), (D) or (E); or
- (G) A lineal descendant of any individual described in subsection (F).

For the purpose of determining "members of the same family," (i) relationship by adoption shall be treated the same as relationship by blood, (ii) financial rights held by any entity that is related (within the meaning of §§ 267(b) and 707(b) of the Code) to any individual shall be deemed to be held by such individual, (iii) the common relative need not be a member of or holder of financial rights in the LLC and (iv) the common ancestor need not be living, but, if deceased, may not be more than four (4) generations removed from the youngest generation of individuals who would (but for this subdivision) be members of the same family. For purposes of the proviso in subdivision (iv), a spouse (or former spouse) shall be treated as being of the same generation as the individual to whom such spouse is (or was) married.

(11) "Financial rights" means a member's or holder's rights to:

- (A) Share in profits and losses as provided in § [304];
- (B) Share in and receive distributions as provided in § [305];
- (C) Receive liquidation distributions as provided in § [620]; and
- (D) Transfer the financial rights described in subsections (A), (B) and (C) of this § [102(11)], as provided in § [507].

(12) "Foreign LLC" (or an LLC that is designated as "foreign") means a limited liability company that is formed under the laws of a jurisdiction other than this state.

(13) "Governance rights" means a member's right to vote on one (1) or more matters, all of a member's other rights as a member in the LLC under the LLC documents or this Act, other than financial rights, and the right to transfer the voting and other rights described in this § [102(13)].

(14) "Holder of financial rights" or "holder" means a person, other than a member, owning any financial rights in an LLC. A holder of financial rights may acquire its financial rights either by transfer of ownership from a member or other holder or directly from the LLC.

(15) "LLC" (sometimes referred to as a "domestic LLC" or an LLC that is designated as "domestic") means a limited liability company formed under this Act or a limited liability company formed under the Prior Act that has elected to be governed by this Act or, where expressly indicated, a limited liability company formed under and governed by the Prior Act.

(16) "LLC documents" means either or both of:

- (A) An LLC's articles; and
- (B) If the LLC has an operating agreement, whether written or oral, its operating agreement.

(17) "Majority vote" means with respect to a vote of the members, managers, or directors, as applicable, (A) if voting on a per capita basis, a majority in number of the members, managers or directors, as applicable, entitled to vote on a specific matter, or (B) if voting is determined otherwise under the LLC documents, a majority in voting interest of the members, managers or directors, as applicable, entitled to vote on a specific matter as determined under the LLC documents.

(18) "Manager" means a person who is vested with authority as a manager under § [401(b)].

(19) "Manager-managed LLC" means an LLC that is so designated in its articles.

(20) "Member" means a person that has been admitted to an LLC as a member as provided in § [501]. With respect to a foreign LLC, "member" means a person recognized under the laws of the jurisdiction of formation of the foreign LLC as a member of the foreign LLC.

(21) "Member-managed LLC" means an LLC that is not a manager-managed LLC or a director-managed LLC.

(22) "Membership interest" means a member's interest in an LLC, which shall consist of the member's financial rights and governance rights.

(23) "Officer" means an individual, who is vested with authority as an officer under § [401(e)].

(24) "Operating agreement" means an agreement described in § [203(a)]

(25) "Person" means an individual or an entity.

(26) "Personal representative" means, as to an individual, the executor, administrator, guardian, conservator, trustee or other legal representative of the individual and, as to an entity, the legal representative or successor of the entity.

(27) "Prior Act" means the Tennessee Limited Liability Company Act set forth at Chapters 201-248 of Title 48 of the Tennessee Code Annotated.

(28) "Principal executive office" means the office (in or out of this state) that is designated as the principal executive office of a domestic or foreign LLC in its articles or in an application for a certificate of authority, as applicable, as thereafter changed from time to time in accordance with this Act.

(29) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal.

(30) "Professional limited liability company" or "professional LLC" or "PLLC" has the meaning set in § [1102].

(31) "Record" means information that is inscribed in a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Registered agent" means the person designated as the registered agent of a domestic or foreign LLC in its articles or in an application for a certificate of authority, as applicable, as thereafter changed from time to time in accordance with this Act.

(33) "Registered office" means the office in this state that is designated as the registered office of a domestic or foreign LLC in its articles or in an application for a certificate of authority, as applicable, as thereafter changed from time to time in accordance with this Act.

(34) "Representative" means, as to a foreign LLC, a director, manager, officer, employee or other agent of a foreign LLC.

(35) "Secretary of state" means the individual who holds the office of secretary of state of this state.

(36) "State" when referring to a part of the United States other than this state, includes a state, a commonwealth, the District of Columbia and a territory and insular possession of the United States (and their respective agencies and governmental subdivisions).

(37) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift and transfer by operation of law.

103. Notice.

(a) *General; Methods of Notice.* Notice under this Act or under the LLC documents to an LLC or to a foreign LLC authorized to transact business in this state, or by an LLC to its managers, directors, officers, employees, agents, members and holders of financial rights, as applicable, shall be in writing, except that oral notice is effective if it is reasonable under the circumstances. Such notice may be communicated to or by an LLC or to a foreign LLC: in person; by telephone, telegraph, teletype, electronic mail or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by publication in a newspaper of general circulation, or by radio, television or other form of public broadcast communication, published or broadcast in the county where the principal executive office of the LLC is or was last located or in such other geographic areas as may be required under the LLC documents.

(b) *Effectiveness of Notice.* Written notice by a domestic LLC to its managers, directors, officers, employees, agents, members and holders of financial rights, as applicable, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the recipient's address shown in the LLC's current records.

(c) *Notice to LLC.* Written notice to a domestic LLC or a foreign LLC authorized to transact business in this state may be addressed to its registered agent at its registered office or to the domestic or foreign LLC or its secretary, if any, at its principal executive office.

(d) *General Effectiveness of Written Notice.* Except as provided in subsection (b) of this § [103], written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(4) Twenty (20) days after its deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

(e) *Oral Notice.* Oral notice is effective when communicated if communicated in a comprehensible manner.

(f) *Notice by Publication or Broadcast.* Notice by publication or public broadcast as provided in subsection (a) is effective upon publication or broadcast, as applicable.

(g) *Governing Requirements.* Notwithstanding the provisions of this § [103], if another provision of this Act prescribes notice requirements for particular circumstances, those requirements shall govern.

104. Purposes and Powers.

(a) *Any Lawful Purpose.* Every LLC has the purpose of engaging in any lawful business, unless a more limited purpose is set forth in its LLC documents.

(b) *Regulation by Another Statute.* An LLC engaging in a business that is subject to regulation under another statute of this state may form under or elect to be governed by this Act only to the extent not prohibited by, and subject to any limitations of, the other statute.

(c) *General Powers.* An LLC has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power to:

(1) Sue and be sued, complain and defend in its LLC name;

(2) Make and amend an operating agreement with its members, not inconsistent with its articles or with the laws of this state, for managing the business and regulating the affairs of the LLC;

(3) Purchase, receive, lease or otherwise acquire, own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(4) Sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of, or grant a security interest in, all or any part of its property;

(5) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, or grant a security interest in, and deal in and with shares or other interests in, or obligations of, any other entity;

(6) Make contracts (including without limitation contracts of guaranty and suretyship), incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other rights or securities of, or other interests in, the LLC), and secure any of its obligations or those of any other person by mortgage, pledge of, or security interest in, any of its property;

(7) Lend money, invest and reinvest its funds and receive and hold real and personal property as security for repayment;

(8) Be a promoter, partner, member, shareholder, associate, trustee or manager of any partnership, joint venture, trust or other entity;

(9) Conduct its business, locate offices and exercise the powers granted by this Act within or without this state;

(10) Elect or appoint directors, managers, officers, employees, and agents of the LLC, as applicable, define their duties, fix their compensation, lend them money and credit and guarantee debt or act as surety on their behalf;

(11) Pay pensions and establish pension plans, pension trusts, profit-sharing plans and retirement or welfare benefit or incentive plans for any or all of the current or former members, directors, managers, officers, employees and agents of the LLC or any of its affiliates;

(12) Make donations for the public welfare or for charitable, scientific or educational purposes;

(13) Make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the LLC;

(14) Procure for its benefit insurance on the life of any of its existing members, holders, directors, managers, officers or employees or other agents for any lawful purpose, including, without limitation, for the purpose of acquiring at a member's or holder's death the membership interest or financial rights owned by such member or holder of financial rights, as applicable, and to continue any such insurance after the LLC's relationship with the insured terminates;

(15) Accept gifts, devises and bequests subject to any conditions or limitations contained in such gift, devise or bequest, so long as such conditions or limitations are not contrary to any provisions of this Act or the purposes for which the LLC is formed;

(16) Accept contributions under § [301]; and

(17) Have and exercise all other powers necessary or convenient to effect any or all of the purposes for which the LLC is formed.

#### 105. Ultra Vires Actions.

(a) *Limit on Power to Challenge.* Except as provided in subsection (b), the validity of an LLC's action may not be challenged on the ground that the LLC lacks or lacked the power to act.

(b) *Challenge of Power.* An LLC's power to act may be challenged in a proceeding by:

(1) A member against the LLC to enjoin the act;

(2) The LLC, directly, derivatively or through a receiver, trustee or other personal representative, against an incumbent or former director, manager, employee, agent or member of the LLC, as applicable; or

(3) The attorney general and reporter under § [617].

(c) *Derivative Action.* In a member's proceeding under subsection (b)(1) to enjoin an unauthorized LLC act, the court may enjoin or set aside the act, if equitable and if all affected persons

are parties to the proceeding, and may award damages for loss suffered by the LLC or another party because of enjoining the unauthorized act.

106. LLC Name.

(a) *Name Requirements.* An LLC name and, to the extent required by this section and § [903], a foreign LLC name:

(1) Must contain the words “limited liability company,” the abbreviation “L.L.C.” or “LLC,” or words or abbreviations of like import in another language; provided that they are written in roman characters or letters; and provided further that, in the case of a foreign LLC, the name may contain, in lieu of the foregoing, the designations allowed by the jurisdiction in which the foreign LLC was formed. A PLLC formed under Chapter 11 of this title must contain the words or the abbreviation as required by § [1108]. Notwithstanding the foregoing, the name of an LLC or foreign LLC must not contain the word “corporation” or “incorporated” or an abbreviation of either or both of these words; and

(2) May not contain language stating or implying that the domestic or foreign LLC:

(A) Transacts or has the power to transact any business for which authorization in whatever form and however denominated is required under the laws of this state, unless the appropriate commission or official has granted such authorization and certifies that fact to the secretary of state in writing;

(B) Is formed as, affiliated with or sponsored by, any fraternal, veterans’, service, religious, charitable or professional organization, unless the formation, affiliation or sponsorship is certified in writing to the secretary of state by the body authorizing the formation or the organization with which affiliation or sponsorship is claimed, as applicable;

(C) Is an agency or instrumentality of, affiliated with or sponsored by the United States or any state, subdivision or agency of the United States, unless such fact is certified in writing to the secretary of state by the appropriate official of the United States or the state, subdivision or agency, as applicable; or

(D) Is formed for a purpose other than that permitted by § [104] and its LLC documents or, in the case of a foreign LLC, its similar formation and operating documents.

(b) *Name Must be Distinguishable.* Except as authorized by subsection (c), the name of a domestic LLC and the name of a foreign LLC that is authorized to transact business in this state or is applying for a certificate of authority to transact business in this state must be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

(c) *Indistinguishable Name of Entity Under Common Control.* A domestic or foreign LLC (or person acting on behalf of an LLC not yet formed) may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state’s records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the indistinguishable name applied for if:

(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

(d) *Assumed Name.* A domestic LLC or a foreign LLC authorized to transact business or applying for a certificate of authority to transact business in this state may elect to adopt an assumed

name that complies with the requirements of subsections (a)-(c), except that the assumed name need not contain the designations contained in subsection (a)(1).

(1) As used in this Act, the "assumed name" of a domestic or foreign LLC means any name used by the LLC, other than the LLC's true name, except that the following shall not constitute the use of an assumed name:

(A) The identification by a domestic or foreign LLC of its business with a trademark or service mark of which it is the owner or licensed user; and

(B) The use of a name of a division, not separately formed and not containing the words "limited liability company" or an abbreviation of such words, provided, that the domestic or foreign LLC's name is also clearly disclosed with the division name.

(2) Before transacting any business in this state under an assumed name or names, the domestic or foreign LLC shall, for each assumed name, execute and file in accordance with § [1005] and § [1007] an application setting forth:

(A) The true name of the applicant;

(B) The jurisdiction in which the applicant is formed;

(C) The applicant's intention to transact business under an assumed name; and

(D) The assumed name that the applicant proposes to use.

(3) The right to use an assumed name shall be effective for five (5) years from the date of filing with the secretary of state. A domestic or foreign LLC may reserve or use no more than five (5) assumed names during the same period.

(4) A domestic or foreign LLC may renew the right to use its assumed name or names, if any, for successive five (5) year periods, by filing an application to renew the assumed name or names and paying the renewal fee as prescribed by § [1007(a)] within the two (2) months preceding the expiration of the then current period.

(e) *Cancellation or Change of Assumed Name.* Any domestic or foreign LLC may change or cancel any or all of its assumed names by filing, in accordance with § [1005] and § [1007], an application setting forth:

(1) The true name of the applicant;

(2) The jurisdiction in which the applicant is formed;

(3) The applicant's intention to cease transacting business in this state under specified assumed name by changing or canceling the assumed name;

(4) The assumed name to be changed or cancelled; and

(5) If the assumed name is to be changed, the new assumed name that the applicant proposes to use.

(f) *Use of Changed Name.* Upon the filing of an application to change an assumed name, the applicant shall have the right to use the new assumed name for a new five (5) year period, subject to the same renewal procedures authorized by subsection (d).

(g) *Cancellation of Assumed Name by Secretary of State.* The right of a domestic or foreign LLC to use an assumed name shall be cancelled by the secretary of state if:

(1) The domestic or foreign LLC fails to renew its right to use the assumed name before the right expires;

(2) The domestic or foreign LLC has filed an application to change the assumed name or to cancel its right to use the assumed name;

(3) In the case of a domestic LLC, the LLC has been dissolved; or

(4) In the case of a foreign LLC, the foreign LLC has had its certificate of authority to transact business in this state revoked.

(h) *Unfair Competition.* Nothing in this section, or in § [107] or § [108], shall abrogate or limit the law as to unfair competition or unfair trade practice, or derogate from the common law, the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect trade names, trademarks and service marks.

(i) *Limited Liability.* A domestic or foreign LLC acting under an assumed name or registered name shall be deemed to have given notice to all third parties that it is a domestic or foreign LLC, as applicable, and its members, managers, directors, officers and agents shall have the same limitations on liability as if the domestic or foreign LLC operated under its true name.

#### 107. Reserved Name.

(a) *Reserving a Name.* A person may reserve the exclusive right to use a name for a domestic or foreign LLC, including an assumed name, by filing an application with the secretary of state. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name applied for meets the requirements of § [106] and is available, the secretary of state shall reserve the name for the applicant's exclusive use for a four (4) month period. Upon the expiration of the four (4) month period, the same or any other party may apply to reserve the same name.

(b) *Transfer of Reserved Name.* The person holding the right to use a name reserved under this § [107], including an assumed name, may transfer the reservation to another person by filing with the secretary of state a notice of the transfer signed by the person holding the right to use the reserved name that states the reserved name being transferred and the name and address of the transferee.

(c) *Cancellation of Reserved Name.* The reservation of a specific name may be cancelled by filing with the secretary of state a notice, executed by the person holding the right to use the reserved name, specifying the reserved name being cancelled and the name and address of the person holding the right to use the reserved name.

#### 108. Registered Name.

(a) *Registration of Name.* A foreign LLC may register its name, an assumed name under which it transacts business or its name with any addition under § [106(a)], if the name is distinguishable upon the records of the secretary of state as required by § [106(b)].

(b) *Process for Name Registration.* A foreign LLC may register its name, its assumed name or its name with any addition under § [106(a)], by filing with the secretary of state an application:

(1) Setting forth the applicant's name, its assumed name or its name with any addition under § [106(a)] and the jurisdiction and date of its formation; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the jurisdiction of formation, bearing a date that is not more than one (1) month prior to the date the application is filed with the secretary of state.

(c) *Effective Date of Registration.* The name is registered for the applicant's exclusive use upon the effective date of the application and until the end of the calendar year in which the registration occurs.

(d) *Renewal of Registered Name.* A foreign LLC for which a name registration is effective may renew the registered name for successive years by filing with the secretary of state a renewal application that complies with the requirements of subsection (b) between October 1 and December 31 of the year prior to the year for which the renewal will be effective.

(e) *Use of Registered Name.* A foreign LLC for which a name registration is effective may apply for authority to transact business in this state as a foreign LLC under that name or consent in writing to the use of that name by a domestic LLC, another foreign LLC authorized or applying for authority to transact business in this state. The registration terminates when the LLC becomes authorized to transact business in this state or when the consent to the use of the registered name becomes effective.

#### 109. Registered Office and Registered Agent.

(a) *Registered Office and Agent.* Each domestic and foreign LLC must continuously maintain in this state:



(1) A registered office that may be the same as any of its places of business;  
and

(2) A registered agent, who may be: an individual who resides in this state, a domestic corporation, a not-for-profit domestic corporation, a domestic LLC or a domestic registered limited liability partnership; or a foreign corporation, a not-for-profit foreign corporation, a foreign LLC or a foreign registered limited liability partnership, in each case authorized to transact business in this state. The registered agent must maintain a business office at the same street address as the registered office.

(b) *New Registered Agent Required.* If a registered agent resigns or is unable to perform the required duties, the affected domestic or foreign LLC shall promptly designate another registered agent to the end that each domestic LLC and each foreign LLC authorized to transact business in this state shall at all times have a registered agent in this state.

#### 110. Change of Registered Office or Registered Agent.

(a) *Change in Registered Office or Agent by LLC.* A domestic or foreign LLC may change its registered office or registered agent by filing with the secretary of state a statement of change that sets forth:

(1) The name of the domestic or foreign LLC;

(2) If the current registered office is to be changed, the street address of the new registered office, including the zip code, and the county in which the office is located;

(3) If the current registered agent is to be changed, the name of the new registered agent; and

(4) A statement that after the change or changes are made, the street addresses of the registered office and the business office of its registered agent will be identical.

(b) *Change in Registered Office by Registered Agent.* If a registered agent changes the street address of such registered agent's business office, the registered agent may change the street address of the registered office of any domestic or foreign LLC for which the registered agent is the registered agent by notifying the affected domestic or foreign LLC in writing of the change and signing (either manually or by facsimile) and filing with the secretary of state a statement that complies with the requirements of subsection (a) and recites that the affected domestic or foreign LLC has been notified of the change.

#### 111. Resignation of Registered Agent.

(a) *Resignation of Registered Agent.* A registered agent of a domestic or foreign LLC may resign the appointment by filing with the secretary of state a statement of resignation signed by the registered agent that includes a certification that the agent has mailed a copy of the statement of resignation to the principal executive office of the affected domestic or foreign LLC by certified mail. The statement may indicate that the registered office also is discontinued.

(b) *Effective Date of Resignation.* The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement described in subsection (a) is filed with the secretary of state.

#### 112. Service on LLC.

(a) *Agent for Service of Process.* A domestic or foreign LLC's registered agent is the agent for the domestic or foreign LLC for service of process, notice or demand required or permitted by law to be served on the domestic or foreign LLC.

(b) *Secretary of State is Default Agent.* Whenever a domestic or foreign LLC authorized to transact business in this state fails to appoint or maintain a registered agent in this state, whenever the registered agent of a domestic or foreign LLC cannot be found with reasonable diligence, whenever a foreign LLC shall transact business or conduct affairs in this state without first obtaining a certificate of authority from the secretary of state or whenever the certificate of authority of a foreign LLC shall have been cancelled or revoked, then the secretary of state shall be an agent of such LLC upon whom any process, notice or demand may be served.

(c) *Special Agent for Workers' Compensation.* Whenever a domestic or foreign LLC authorized to transact business in this state is an employer within the meaning of the Workers' Compensation Law and the domestic or foreign LLC is, for the purpose of the Workers' Compensation Law, self-insured or a part of a self-insurance pool as provided in [Title 50, Chapter 6,

Part 4], the domestic or foreign LLC shall, for workers' compensation actions only, be required to appoint the commissioner of commerce and insurance and such commissioner's chief deputy, or their successors, as its true and lawful attorneys upon either of whom all lawful process in any Workers' Compensation action or legal proceeding against it may be served as is required of insurance companies by the provisions of [§ 56-2-103].

(d) *Not Exclusive Means of Service.* This section does not prescribe the only means, or necessarily the required means, of service on a domestic or foreign LLC.

113. Procedure For Service on Domestic or Foreign LLC by Service on Secretary of State.

(a) *Service on Secretary of State.* Service on the secretary of state, when the secretary of state is an agent for a domestic or foreign LLC as provided in [§ 112(b)], of any process, notice or demand shall be made by delivering to the office of the secretary of state the original and one (1) copy of such process, notice or demand, duly certified by the appropriate official, together with the proper fee. A statement that identifies which of the grounds, as listed in [§ 112(b)], for service on the secretary of state is applicable must be included. The office of the secretary of state shall endorse the time of receipt upon the original and copy and immediately shall send the copy, along with a written notice that service of the original also was made, by registered or certified mail, with return receipt requested, addressed to the domestic or foreign LLC at its registered office or principal executive office as shown in the records on file in the secretary of state's office or as shown in the official registry of the state or country in which the foreign LLC is formed. The secretary of state may require the person seeking to serve the process, notice or demand, or the person's attorney, if any, to furnish the latter address.

(b) *Refusal of Service Ineffective.* The refusal or failure of the domestic or foreign LLC to accept delivery of the registered or certified mail provided for in subsection (a), or the refusal or failure to sign the return receipt, shall not affect the validity of the service; and any domestic or foreign LLC refusing or failing to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of any process, notice or demand contained therein.

(c) *Receipt Received by Secretary of State.* When the registered or certified mail return receipt is received by the office of the secretary of state or when a domestic or foreign LLC refuses or fails to accept delivery of the registered or certified mail and it is returned to the office of the secretary of state, the office of the secretary of state shall forward the receipt or such refused or undelivered mail to the clerk of the court in which the proceeding is pending or other appropriate official or person, together with the original process, notice or demand, a copy of the notice the secretary of state sent to the defendant LLC and the secretary of state's affidavit setting forth the secretary of state's compliance with this section. Service made under this section shall have the same legal force and validity as if the service had been made personally in this state.

(d) *Subsequent Pleadings.* Subsequent pleadings or papers permitted or required to be served on a domestic or foreign LLC may be served on the secretary of state as agent for the domestic or foreign LLC in the same manner, at the same cost and with the same effect as process, notice or demand are served on the secretary of state as agent for the domestic or foreign LLC under this section.

(e) *Minimum Time for Appearance.* No appearance shall be required in the proceeding by the domestic or foreign LLC on which service is completed under this section nor shall any judgment be taken against such domestic LLC in less than one (1) month after the date service is completed under this section.

(f) *Record Retained.* The secretary of state shall keep a record of all processes, notices, demands and subsequent pleadings or papers served upon the secretary of state under this section, which record shall include the time of each service and the secretary of state's action with reference to the service.

114. Personal Liability.

(a) *Limited Liability Rule.* Except as provided in subsections (d) and (f), the debts, obligations and liabilities of an LLC, whether arising in contract, tort or otherwise; are solely the debts, obligations and liabilities of the LLC and:

(1) A member, holder, director, manager, officer, employee or other agent of an LLC does not have any personal obligation and is not otherwise personally liable for the acts, debts, liabilities or obligations of the LLC.

(2) A member, holder, director, manager, officer, employee or other agent of an LLC does not have any personal obligation and is not otherwise personally liable for the

acts or omissions of any other member, holder, manager, officer, director, employee or other agent of the LLC.

Notwithstanding the provisions of subsections (a)(1) and (a)(2), a member, holder of financial rights, director, manager, officer, employee or other agent may be personally liable by reason of such person's own acts or omissions.

(b) *Limited Liability After Dissolution.* The limitation on liability described in subsection (a) continues in full force regardless of any dissolution, winding up or termination of an LLC.

(c) *Member Not a Proper Party to Proceeding.* A member, holder, director, manager, officer, employee or other agent of an LLC is not a proper party to a proceeding by or against an LLC except:

(1) Where the object of the proceeding is to enforce such person's right against or liability to the LLC;

(2) In a derivative proceeding brought under this Act or the LLC documents; or

(3) Where the proceeding asserts personal liability of such person as described in subsection (a).

(d) *Sales Tax Liability.* Notwithstanding any other provision of this Act to the contrary, each member, manager, director, officer, employee, agent or other person required to collect, truthfully account for and pay over to the department of revenue any tax collected from the customers of a domestic or foreign LLC shall be personally liable for those taxes in the same manner as responsible persons of a corporation under the provisions of [§ 67-1-1443].

(e) *Failure to Follow Formalities Not to Generate Personal Liability.* The failure of a domestic or foreign LLC to observe the usual entity formalities or requirements relating to the exercise of its powers or management of its business is not a ground for imposing personal liability on the members, holders, managers, directors, officers, employees or other agents of the domestic or foreign LLC.

(f) *Voluntary Unlimited Liability.*

(1) Notwithstanding anything to the contrary in this section, the articles may provide that one (1) or more specifically identified members, as named in the articles, will be personally liable for all of the debts, obligations and liabilities of the LLC and, if that provision is made, each such specifically identified member shall be liable to the same extent as a general partner in a general partnership; provided, that:

(A) In order to be effective, each member so identified must sign the articles or an amendment to the articles containing this provision; and

(B) Each member identified in the articles shall continue to be personally liable for debts, obligations and liabilities of the LLC until the articles are amended to delete the member's name, but, except as provided in subsection (f)(2), the amendment must be signed by a person authorized to bind the LLC under [§ 402] and by any remaining members who continue to be identified in the articles as being personally liable for the debts, obligations and liabilities of the LLC.

(2) A member who is identified in the articles as being personally liable has the power, but not necessarily the right, to file an amendment to the articles stating that such member will not be liable for any future debts, obligations and liabilities of the LLC; except with respect to persons that have reasonably relied upon the articles.

(3) An amendment to the articles filed under subsections (f)(1) and (2) shall be effective immediately, except that such an amendment is not effective against persons reasonably relying upon the articles naming the member as individually liable for the debts, obligations and liabilities of the LLC until the passage of ninety (90) days from the filing of the amendment to the articles. Notwithstanding the preceding, such member will continue to be liable for all debts and obligations of the LLC incurred by the LLC the time that the member was identified in the articles as being personally liable.

#### 115. Indemnification.

(a) *Definitions.* As used in this [§ 115], unless the context otherwise requires:

(1) "Expenses" include, without limitation, counsel fees;

(2) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan) or reasonable expenses incurred with respect to a proceeding;

(3) "LLC" includes any domestic LLC and any domestic or foreign predecessor of an LLC in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction;

(4) (A) "Official capacity" means:

(i) With respect to a director in a director-managed LLC, the position of director;

(ii) With respect to a manager in a manager-managed LLC, the position of manager;

(iii) With respect to a member in a member-managed LLC, a member who took an action of management as a member; and

(iv) With respect to a person in a capacity not described in subsection (a)(4)(A)(i), (ii) or (iii), the elective or appointive office or position held by an officer, member of a committee of the board of directors or member of a committee of the managers or members or the employment or agency relationship undertaken by an employee or agent on behalf of the LLC; and

(B) "Official capacity" does not include service for any other foreign or domestic entity;

(5) "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding;

(6) "Responsible person" means an individual who is or was a director of a director-managed LLC, a manager of a manager-managed LLC or a member of a member-managed LLC or an individual who, while a director of a director-managed LLC, a manager of a manager-managed LLC or a member of a member-managed LLC, is or was serving at the LLC's request as a director, manager, officer, partner, trustee, employee or agent of an employee benefit plan or any other foreign or domestic entity. For purposes of the preceding sentence, a director of a director-managed LLC, a manager of a manager-managed LLC or a member of a member-managed LLC is considered to be serving an employee benefit plan at the LLC's request if the director's, manager's or member's duties to the LLC also impose duties on, or otherwise involve services by, the director, manager or member to the plan or to participants in or beneficiaries of the plan. "Responsible Person" includes, unless the context requires otherwise, the estate or personal representative of a responsible person; and

(7) "Special legal counsel" means counsel who has not represented the LLC or a related LLC, or a member, director, manager, member of a committee of the board of directors, member of a committee of the managers, member of a committee of the members, officer, agent or employee, whose indemnification is in issue.

(b) *Authority to Indemnify.*

(1) Except as provided in subsection (d), an LLC may indemnify an individual made a party to a proceeding because such individual is or was a responsible person against liability incurred in the proceeding if the individual:

(A) Acted in good faith; and

(B) Reasonably believed:

(i) In the case of conduct in such individual's official capacity with the LLC, that such individual's conduct was in the LLC's best interest; and

(ii) In all other cases, that such individual's conduct was at least not opposed to the LLC's best interests; and

(C) In the case of any criminal proceeding, had no reasonable cause to believe such individual's conduct was unlawful.

(2) A responsible person's conduct with respect to an employee benefit plan for a purpose such person reasonably believed to be in the best interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (b)(1)(B).

(3) The termination of a proceeding by judgment, order, settlement or conviction or upon a plea of *nolo contendere* or its equivalent is not, of itself, determinative that the responsible person did not meet the standard of conduct described in this section.

(4) Except as provided in subsection (e), an LLC may not indemnify a responsible person under this section:

(A) In connection with a proceeding by or in the right of the LLC in which the responsible person was adjudged liable to the LLC; or

(B) In connection with any other proceeding charging improper personal benefit to such responsible person, whether or not involving action in such person's official capacity, in which such person was adjudged liable on the basis that personal benefit was improperly received by such person.

(c) *Mandatory Indemnification.* An LLC shall indemnify a responsible person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a responsible person against reasonable expenses incurred by the person in connection with the proceeding.

(d) *Advances for Expenses.*

(1) An LLC may pay for or reimburse the reasonable expenses incurred by a responsible person who is a party to a proceeding in advance of final disposition of the proceeding if:

(A) The responsible person furnishes the LLC a written affirmation of good faith belief that such responsible person has met the standard of conduct described in subsection (b);

(B) The responsible person furnishes the LLC a written undertaking, executed personally or on such responsible person's behalf, to repay the advance if it is ultimately determined that the responsible person is not entitled to indemnification; and

(C) A determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by subsection (d)(1)(B) must be an unlimited general obligation of the responsible person but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in subsection (f).

(e) *Court Ordered Indemnification.* A responsible person who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(1) The responsible person is entitled to mandatory indemnification under subsection (c), in which case the court also shall order the LLC to pay the responsible person's reasonable expenses incurred to obtain court ordered indemnification; or

(2) The responsible person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the responsible person met the standard of conduct set forth in subsection (b)(1) or was adjudged liable as described in subsection (b)(4), but if the responsible person was adjudged so liable the responsible person's indemnification is limited to reasonable expenses incurred.

(f) *Determination and Authorization of Indemnification.*

(1) Except as provided in subsection (e), an LLC may not indemnify a responsible person under subsection (b) unless authorized in the specific case after a determination has been made that indemnification of the responsible person is permissible in the circumstances because the responsible person has met the standard of conduct set forth in subsection (b)(1).

(2) Such determination shall be made:

(A) By the board of directors of a director-managed LLC, by the managers of a manager-managed LLC or by the members of a member-managed LLC, as applicable, by majority vote of a quorum consisting of directors, managers or members, as applicable, not at the time parties to the proceeding;

(B) If a quorum cannot be obtained under subsection (f)(2)(A), by majority vote of a committee duly designated by the board of directors of a board-managed LLC, by the managers of a manager-managed LLC or by the members of a member-managed LLC, as applicable (in which designation directors, managers or members, as applicable, who are parties may participate), consisting solely of two (2) or more directors, managers or members, as applicable, who are not at the time parties to the proceeding;

(C) By special legal counsel:

(i) Selected by the board of directors of a director-managed LLC, by the managers of a manager-managed LLC or by the members of a member-managed LLC, as applicable, or by a committee in the manner prescribed in subsection (f)(2)(A) or (B); or

(ii) If a quorum of the board of directors of a director-managed LLC, the managers of a manager-managed LLC or the members of a member-managed LLC, as applicable, cannot be obtained under subsection (f)(2)(A) and a committee cannot be designated under subsection (f)(2)(B), selected by majority vote of the full board of directors of a director-managed LLC, by the managers of a manager-managed LLC or by the members of a member-managed LLC (in which selection directors, managers or members, as applicable, who are parties to the proceeding may participate); or

(D) By a majority vote of the members of a director-managed LLC or a manager-managed LLC, but voting rights owned or controlled by members who are at the time parties to the proceeding may not be voted on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (f)(2)(C) to select counsel.

*(g) Indemnification of Officers, Employees and Agents.*

(1) An officer of the LLC who is not a responsible person is entitled to mandatory indemnification under subsection (c) and is entitled to apply for court-ordered indemnification under subsection (e), in each case to the same extent as a responsible person.

(2) The LLC may indemnify and advance expenses to an officer, employee, independent contractor or agent of the LLC who is not a responsible person to the same extent as a responsible person.

(3) An LLC may also indemnify and advance expenses to an officer, employee, independent contractor or agent who is not a responsible person to the extent, consistent with public policy, that may be provided by its LLC documents, by general or specific action of the board of directors of a director-managed LLC, by the managers of a manager-managed LLC, by the members of a member-managed LLC or by contract.

(h) *Insurance.* An LLC may purchase and maintain insurance on behalf of a person who is or was a responsible person, officer, employee, independent contractor or agent of the LLC, or who, while a responsible person, officer, employee, independent contractor or agent of the LLC, is or was serving at the request of the LLC as a responsible person, officer, partner, trustee, employee,

independent contractor or agent of an employee benefit plan or any other domestic or foreign entity, against liability asserted against or incurred by such person acting in that capacity or arising from the person's status as a responsible person, officer, employee, independent contractor or agent, whether or not the LLC would have power to indemnify the person against the same liability under subsection (b), (c) or (g).

(i) *Non-exclusivity.*

(1) The indemnification and advancement of expenses granted under or provided by this section shall not be deemed exclusive of any other rights to which a responsible person seeking indemnification or advancement of expenses may be entitled, whether contained in this section, the LLC documents or, when authorized by such LLC documents, action of the members, directors or managers or an agreement providing for such indemnification; provided that no indemnification may be made to or on behalf of any responsible person if a judgment or other final adjudication adverse to the responsible person or officer establishes such person's liability:

(A) For any breach of the duty of loyalty to the LLC or its members;

(B) or acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(C) Under § [307].

(2) Nothing contained in this § [115] shall affect any rights to indemnification to which the LLC's personnel, other than responsible persons, may be entitled by contract or otherwise under law. If the LLC documents limit indemnification or advances for expenses, indemnification and advances for expenses are valid only to the extent consistent with the LLC documents.

(3) This § [115] does not limit an LLC's power to pay or reimburse expenses incurred by a responsible person, officer, employee, independent contractor or agent in connection with such person's appearance as a witness in a proceeding at a time when such person has not been made a named defendant or respondent to the proceeding.

116. LLC as Legal Entity. An LLC is a legal entity distinct from its members.

## Chapter 2

### FORMATION, ARTICLES OF ORGANIZATION AND OPERATING AGREEMENT

201. Formation.

(a) *Formation.* One (1) or more persons acting as organizers may form an LLC by filing with the secretary of state articles for the LLC which contain the information required by § [202]. Unless a delayed effective date or an occurrence of a future event is specified in the articles, the LLC is formed and its existence begins when the articles are filed with the secretary of state. Subject to subsection (c), if a delayed effective date or an occurrence of a future event is specified in the manner permitted by § [202(a)(7)], the LLC is formed and its existence begins at the future date specified in the articles or on the occurrence of the future event specified in the articles, neither one of which may be or occur more than ninety (90) days from the initial filing of the articles.

(b) *Conclusive Proof of Formation.* If the date of formation is the date of filing of the articles or a later date specified in the articles at the time of filing, filing of the articles with the secretary of state is conclusive proof that the organizers satisfied all conditions precedent to formation as of the date of filing or the specified later date, except in a proceeding by the state to cancel or revoke the formation or existence of the LLC or to dissolve the LLC involuntarily.

(c) *Certificate of Formation.* If the date of formation of the LLC is to be the date of a future event specified in the articles, the organizers or any member may, within thirty (30) days after the date the future event occurs, file a certificate of formation that states that the LLC was formed and sets forth the date of formation, and the filing of the certificate of formation with the secretary of state is conclusive proof that the organizers satisfied all conditions precedent to formation, except in a proceeding by the state to cancel or revoke the formation or existence of the LLC or to dissolve the LLC involuntarily. If a certificate of formation is not filed within one hundred twenty (120) days from the date of initial filing of the articles, the effective date of the formation (and the conclusive effect thereof pursuant to the preceding sentence) shall be presumed to have occurred on the ninetieth (90th) day following the date of filing of the articles. Such presumption, however, may be rebutted.

202. Articles of Organization.

(a) *Mandatory Contents.* The articles must set forth:

- (1) A name for the LLC that satisfies the requirements of § [106];
- (2) The street address and zip code of the initial registered office of the LLC, the county in which the office is located and the name of its initial registered agent at that office;
- (3) The street address and zip code of the principal executive office of the LLC and the county in which the office is located;
- (4) A statement as to whether the LLC will be member-managed, manager-managed, or director-managed;
- (5) If the LLC will have more than six (6) members at the date of filing of the articles, a statement of the number of members at the date of the filing of the articles;
- (6) If, under § [114(f)], one (1) or more members are personally liable for all of the debts, obligations and liabilities of the LLC, the information required in § [114(f)];
- (7) If the existence of the LLC is to begin upon a future date or the occurrence of a specific event, the future date or a description of the specific event except that in no event may the future date or the actual occurrence of the specific event be more than ninety (90) days after the filing of the articles in compliance with § [201];
- (8) If the LLC, while being formed under Tennessee law, is not to engage in business in Tennessee, a statement that the LLC is prohibited from engaging in business in Tennessee; and
- (9) If the duration of the LLC is to be limited to a specific period of time or term of years, such limitation and the future date on which dissolution is to occur or the term of years shall be stated in the articles.

(b) *Optional Contents.* The articles may set forth:

- (1) Provisions permitted to be set forth in an operating agreement;
- (2) Other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the LLC;
- (3) If the LLC is director-managed, a provision eliminating or limiting the personal liability of a director to the LLC or its members for monetary damages for breach of fiduciary duty as a director; provided that such provision shall not eliminate or limit the liability of a director:
  - (A) For any breach of the director's duty of loyalty to the LLC or its members;
  - (B) For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; or
  - (C) Under § [307]; and
- (4) A statement to the effect that § [503(b)(2)] shall not apply to the LLC regardless of whether the LLC falls within the definition of a "family LLC" under § [102(10)].

No provision included in the articles under subsection (b)(3) shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in subsection (b)(3) to a "director" also are deemed to refer to a member who, under the operating agreement, has been delegated some or all of the rights of a director in the management and conduct of the LLC's business, as set forth in § [403(i)(2)]. If the secretary of state prescribes a form for articles, such form shall contain substantially the following statement: "If the LLC desires that § [503(b)(2)] (which restricts withdrawals from a 'family LLC') NOT apply to the LLC, regardless of whether the LLC falls within the definition of a 'family LLC', place an 'x' in the following space: \_\_\_\_\_."

(c) *Statement of Powers Not Necessary.* It is not necessary to set forth in the articles any of the LLC powers granted by this Act.



(d) *Nonwaivable Provisions; Conflict with Operating Agreement.* The articles may not contain any provisions prohibited by § [205(b)]. As to all other matters, if the articles are inconsistent with any provision of an operating agreement, the articles shall control.

## 203. Operating Agreement.

(a) *General.* Except as otherwise provided in § [205], all members of an LLC may enter into an operating agreement to regulate the affairs of the LLC and the conduct of its business and to govern relations between or among the members, holders, managers, directors, officers and the LLC, as applicable. Persons other than members, including holders of financial rights, may, but need not, also enter into the operating agreement. The LLC also may be a party to the operating agreement. An operating agreement may be entered into either before, after or at the time of filing of articles of organization and, whether entered into before, after or at the time of such filing, may be made effective as of the formation of the LLC or at a later time or date provided in the operating agreement. Except to the extent the articles of organization or a written provision of an operating agreement specifically require otherwise, an operating agreement need not be in writing. The written provisions of an operating agreement need not be set out in a single integrated document.

(b) *Judicial Remedy.* A court of equity may enforce an operating agreement by injunction or by other equitable relief determined by the court, in its discretion, to be fair and appropriate in the circumstances. As an alternative to injunctive or other equitable relief, when the provisions of § [601] are applicable, a court of equity may conduct or continue the dissolution, winding up and termination of the LLC.

(c) *Single-member LLC.* An LLC with a single member may adopt and, if so, shall be bound by an operating agreement between the member and the LLC.

(d) *LLC Bound.* An LLC is bound by the provisions of an operating agreement even if the LLC is not a signatory to the agreement.

(e) *Binding on Subsequent Members and Holders.* The articles or the written provisions of an operating agreement of an LLC adopted under subsection (a) may provide that the written provisions of the LLC's operating agreement shall be binding upon a person who thereafter becomes a member or holder without executing an existing operating agreement, if the new member or holder otherwise complies with the conditions for becoming a member or holder as set forth in the LLC documents of such LLC.

## 204. Amendment or Restatement of Articles of Organization; Amendment of Operating Agreement.

(a) *Amendment Procedure.* Articles of organization of an LLC may be amended at any time by filing articles of amendment with the secretary of state. The articles of amendment must set forth the:

- (1) Name of the LLC;
- (2) Date of each amendment's adoption; and
- (3) Text of each amendment to the articles.

(b) *Restatement.* An LLC may restate its articles of organization at any time. Restated articles of organization must be designated as such in the heading; provided that, if the restatement also contains one (1) or more amendments to the articles, the restatement shall be designated in the heading as "Amended and Restated Articles of Organization." An LLC restating its articles shall file with the secretary of state the restated articles together with a certificate setting forth the name of the LLC and the date of approval by the LLC of the restatement. If the restatement contains any amendment(s) to the articles, such certificate shall also set forth the text of each amendment and the date of its adoption. The restated articles must contain all the requirements of articles as set out in § [202]. Duly adopted and restated articles supersede the original articles and all prior amendments thereto. The secretary of state may certify restated articles as the articles currently in effect, without including the certificate information required by this subsection (b).

(c) *Approval.* Any amendment to an LLC's articles must be approved by all of the members; provided, however, that amendment of any of the matters set forth in the articles under any of subsections (a)(1), (2), (3) or (5) of § [202] only need be approved by a majority vote of the members. A restatement of the articles, to the extent not also involving an amendment thereof, may be approved by action under subsection (a)(2), (b)(2) or (c)(2) of § [401], as applicable. Any amendment to an LLC's operating agreement must be approved by the method provided in its LLC documents. If the LLC documents do not provide for the method by which an operating agreement may be amended, all of the members must approve any amendment to the operating agreement.

205. Waivable and Nonwaivable Provisions of Act.

(a) *Act's Provisions Generally Waivable.* To the extent the LLC documents do not otherwise provide, this Act governs relations among the members, holders of financial rights, managers, directors, officers and LLC, as applicable. It is the express intent of the legislature of this state that members of an LLC may modify, alter or waive any provisions of this Act in the LLC documents, except as otherwise set forth in § [205(b)].

(b) *Nonwaivable Provisions of Act.* The LLC documents may not:

- (1) Vary the requirement under § [102(6)] that a director be an individual;
- (2) Vary the notice requirements under § [103] or under the other provisions of this Act in a manner that is manifestly unreasonable;
- (3) Vary the requirements with respect to the LLC's name under § [106];
- (4) Vary the requirements under § [112(c)] regarding the Workers' Compensation Law;
- (5) Eliminate or vary the potential for personal liability under the last sentence of § [114(a)] or under § [114(d)];
- (6) Eliminate or vary the restrictions on indemnification in §§ [115(i)(1)(A), (B) or (C)];
- (7) Eliminate or vary any restrictions in §§ [202 (b)(3)(A), (B), or (C)] on the elimination or limitation of the personal liability of a director in the articles under § [202(b)(3)];
- (8) Eliminate or vary this section;
- (9) Eliminate or vary the restrictions on distributions in § [306];
- (10) Eliminate or vary the liability for unlawful distributions in § [307];
- (11) Authorize a director to appoint a proxy;
- (12) Unreasonably restrict a right to information or access to records under § [308];
- (13) Eliminate the duty of loyalty under §§ [403(b)(1) or (2)], but the LLC documents may:
  - (A) Identify specific types or categories of activities that do not violate the duty of loyalty under §§ [403(b)(1) or (2)], if not manifestly unreasonable; and
  - (B) Specify the number or percentage of members, disinterested managers or disinterested directors (which may be greater or lesser than the number or percentage required under § [404], if applicable) that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (14) Unreasonably reduce the duty of care under § [403(c)], § [403(i)(4)(B)], § [403(i)(4)(C)], § [403(j)(2) or § [403(j)(3)];
- (15) Eliminate the obligation of good faith and fair dealing under § [403(d)], but the LLC documents may determine the standards by which performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (16) Eliminate the obligation of good faith under § [403(i)(4)(A)] or § [403(j)(1)], but the LLC documents may determine standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (17) Vary the right to expel a member in an event specified in § [503(a)(6)];
- (18) Vary the requirement to wind up the LLC's business in an event specified in § [601(a)(5)];
- (19) Eliminate or vary the provisions of Chapter [11] of this title;

(20) Vary any requirements relating to documents required to be filed with the secretary of state or any register of deeds or otherwise vary or restrict any other rights of the secretary of state or any register of deeds; or

(21) Otherwise vary or restrict any rights of any other person under this Act, other than rights of a manager, director, officer, employee, agent, member or holder of financial rights.

## CHAPTER 3

### FINANCE

#### 301. Contribution and Acceptance.

(a) *Permissible Forms.* A contribution to an LLC may consist of tangible or intangible property or other benefit to the LLC, including money, a promissory note, services performed or an obligation or agreement to contribute money or property or to perform services.

(b) *Signed Writing Required.* A contribution agreement, whether made before or after the formation of the LLC, is not enforceable against the prospective contributor unless it is in writing and signed by the prospective contributor.

(c) *Acceptance Required.* Neither a purported contribution nor an offer of consideration to make a contribution shall be treated as a contribution to an LLC until (1) the contribution is accepted by the members in the case of a member-managed LLC, by both the members and the managers in the case of a manager-managed LLC or by both the members and the directors in the case of a director-managed LLC and (2) the amount and value of the contribution are recorded in the LLC documents or the records of the LLC.

(d) *Required Determinations.* The amount, the terms and conditions of payment or performance and the value and adequacy of the consideration to an LLC for each contribution shall be determined by the members in the case of a member-managed LLC, by both the members and the managers in the case of a manager-managed LLC or by both the members and the directors in the case of a director-managed LLC. The determination of the amount, value and adequacy of the consideration to an LLC for a contribution is valid and binding if made in good faith and on the basis of accounting methods or a fair valuation or other method (including agreement as to value by the contributor and the LLC, as provided in this section) reasonable in the circumstances. Inclusion of the amount of a contribution and the value of the consideration for a contribution in the LLC documents or the records of the LLC is evidence of the acceptance of the amount and the value of a contribution.

(e) *Required Approval.* The vote or consent of the members required to accept a contribution shall be the same as the vote or consent required to admit a member under § [501].

#### 302. Liability for Contributions.

(a) *Obligation to Perform.* A member or other person who has agreed in writing to make a contribution of tangible or intangible property or other benefit to, or to perform services for, an LLC is obligated to make that contribution, even if the member or other person is unable to perform personally because of death, disability or any other reason.

(b) *Option to Require Cash.* If a member or other person does not make a required contribution of property or services, then, at the option of the LLC to which the member or other person is obligated, the member or the other person shall be obligated to contribute money equal to the value (as stated in the LLC documents or the records of the LLC) of the portion of the required contribution that has not been made. The foregoing option of the LLC is in addition to, and not in lieu of any other rights and remedies, including the right to specific performance, that the LLC or its members may have against such member or other person, whether under this Act, under the LLC documents or otherwise.

(c) *Enforcement by Creditor.* A creditor of an LLC who extends credit or otherwise acts in reliance on an obligation described in subsection (a), and without notice of any compromise under § [401(f)(3)], may enforce the original obligation.

(d) *Remedies on Default.* The LLC documents may provide that the interest of any member or other person who fails to make any contribution that the member or other person is obligated to make to an LLC shall be subject to specified penalties for, or specified consequences of, such failure. Such a penalty or consequence may take the form of:

- (1) Reducing or eliminating the defaulting member's or person's proportional interest in the LLC;
- (2) Subordinating the interest of the defaulting member or other person to that of non-defaulting members or other persons;
- (3) Forcing a sale of the interest of the defaulting member or other person;
- (4) Causing forfeiture of the interest of the defaulting member or other person;
- (5) Permitting other members or persons to lend to the LLC the amount necessary to satisfy the obligation of the defaulting member or other person and charging interest on the borrowed amount at a rate up to the highest rate allowed by law, with repayments of the loans being made from the distributions allocable to the interest of the defaulting member or other person;
- (6) Fixing the value of the interest of the defaulting member or other person by appraisal or by formula and redemption or selling the interest of the defaulting member or other person at that fixed value; or
- (7) Any other penalty or consequence.

### 303. Interests in LLC.

(a) *Classification of Interests.* The LLC documents may provide for classes or groups of directors, managers, members or holders of financial rights having the relative rights, preferences, limitations, powers and duties provided in the LLC documents and may make provision for the future creation, in the manner provided in the LLC documents, of additional classes or groups of directors, managers, members or holders of financial rights having the relative rights, powers and duties from time to time established, including financial rights, preferences, limitations, powers and duties that are senior or subordinate to existing classes and groups of directors, managers, members or holders of financial rights. The LLC documents may provide for the taking of an action, including the amendment of the LLC documents, without the vote or approval of any director, manager, member or holder of financial rights or of any class or group of directors, managers, members or holders of financial rights, including an action to create a class or group of directors, managers, members or holders of financial rights under the provisions of the LLC documents. The LLC documents may denominate membership interests or financial rights as units, shares, percentages, participations, distribution interests, ownership or economic interests, with or without voting rights, and with or without fixed or variable rights to participate in distributions, assets and properties, allocations of profits and losses and fixed or variable obligations to the LLC or any combination thereof.

(b) *Voting Rights.* The LLC documents may grant to all or certain identified directors, managers, members or holders of financial rights, or to one (1) or more specified classes or groups of the directors, managers, members or holders of financial rights, the right to vote separately or to vote with all or any other classes or groups of directors, managers, members or holders of financial rights, on any matter. The voting rights of directors, managers, members and holders of financial rights may be per capita, or by number, unit, share, percentage, participation, economic interest or financial rights, or by one (1) or more classes or groups or on any other basis. The LLC documents may provide that any director, manager, member or holder of financial rights, or any class or group of directors, managers, members or holders of financial rights, shall have full, partial, limited or no voting rights with respect to any or all matters.

(c) *Financial Rights Non-voting.* Except as otherwise provided in the LLC documents, a holder of financial rights that is not also a member does not have a right to vote by reason of or with respect to such financial rights.

(d) *Parity of Interests.* Except as otherwise provided in the LLC documents, all membership interests and financial rights shall be of the same class and group, with the same relative rights, powers and duties, and without preferences, subordinations or limitations.

### 304. Sharing of and Rights to Profits and Losses.

(a) *LLC Documents Control.* Any profits and losses of an LLC shall be allocated among the members or holders of financial rights in the manner provided in the LLC documents.

(b) *LLC Documents Silent.* If the LLC documents do not provide for allocations of profits and losses, profits and losses shall be allocated among the members and holders of financial rights in equal shares.

(c) *Record Date*. The LLC documents may provide for a record date with respect to allocations of profits and losses.

305. Sharing of and Rights to Distributions.

(a) *LLC Documents Control*. Any distributions by an LLC shall be allocated and distributed among the members and holders of financial rights in the manner provided in the LLC documents.

(b) *LLC Documents Silent*. If the LLC documents do not provide for the allocations of distributions, then distributions, including distributions on termination of the LLC, except as provided in § [620], shall be allocated among the members and holders of financial rights in equal shares.

(c) *Record Date*. The LLC documents may provide for a record date with respect to distributions.

(d) *In kind Distributions*. Neither a member nor a holder has a right to demand or receive a distribution in kind regardless of the contribution of the member or holder or (ii) may be compelled to accept a distribution of any asset in kind from an LLC to the extent that the percentage of the asset distributed to the member or holder exceeds a percentage of that asset that is equal to the percentage in which the member or holder shares in distributions from the LLC.

(e) *Status of Recipient*. If a member or holder of financial rights becomes entitled to receive a distribution, the member or holder of financial rights has the status of, and is entitled to all remedies available to, a general, unsecured creditor of the LLC with respect to the distribution.

(f) *Entitlement to Receive Distributions*. A member or holder of financial rights is entitled to receive distributions before dissolution only as provided by the LLC documents or by a majority vote of the members of a member-managed LLC, the managers of a manager-managed LLC or the directors of a director-managed LLC, as applicable.

306. Limitations on Distributions.

(a) *Restriction on Distributions*. No distribution may be made by an LLC if, after giving effect to the distribution:

(1) The LLC would not be able to pay its debts as they become due in the ordinary course of business; or

(2) The LLC's total assets would be less than the sum of its total liabilities, other than liabilities for which the recourse of creditors is limited to specified property, plus the amount that would be needed, if the LLC were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of members and holders of financial rights, whose preferential rights are superior to those receiving the distribution; provided, however, that the value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the total assets of the LLC only to the extent that the value of the property exceeds such liability.

(b) *Basis for Determination*. An LLC may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(c) *Timing of Determination*. Except as otherwise provided in subsection (f), the effect of a distribution under subsection (a) is measured:

(1) In the case of distribution by purchase, redemption or other acquisition of a membership interest or financial rights in an LLC, as of the date money or other property is transferred or debt incurred by the LLC; and

(2) In all other cases, as of the date the:

(A) Distribution is authorized, if the payment occurs within four (4) months after the date of authorization; or

(B) Payment is made, if it occurs more than four (4) months after the date of authorization.

(d) *Parity of Indebtedness*. Indebtedness of an LLC to a member or holder of financial rights or incurred by reason of a distribution made in accordance with this section is at parity with the

LLC's indebtedness to its general, unsecured creditors, except to the extent such indebtedness is subordinated by agreement or, in the event of dissolution and liquidation, to the extent otherwise provided in § [620].

(e) *Status as Liability.* Indebtedness of an LLC, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection (a) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to members and holders of financial rights could then be made under this section.

(f) *Treatment of Payments.* If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

### 307. Liability for Unlawful Distributions.

(a) *Personal Liability for Approving.* A member, manager or director of an LLC who votes for or consents to a distribution made in violation of § [306] or the LLC documents is personally liable to the LLC for the amount of the distribution that exceeds the amount that could have been distributed without violating § [306] or the LLC documents if such member, manager or director did not comply with the applicable standards of conduct for such member, manager or director as set forth in § [403].

(b) *Personal Liability for Receiving.* A member or holder of financial rights who received a distribution and who knew the distribution was made in violation of § [306] or the LLC documents is personally liable to the LLC, but only to the extent that the distribution received by the member or holder of financial rights exceeded the amount that could have been properly distributed under § [306].

(c) *Permitted Impleader.* A member, holder of financial rights, manager or director against whom an action is brought under this section may implead in the action all:

(1) Other members, holders of financial rights, managers and directors who voted for or consented to the distribution in violation of subsection (a) and may compel contribution from them; and

(2) Members and holders of financial rights who received a distribution in violation of subsection (b) and may compel contribution from the members or holders of financial rights in the amount received in violation of subsection (b).

(d) *Time Limitation.* A proceeding under this section is barred unless it is commenced within three (3) years after the distribution.

### 308. Right to Information.

(a) *General.* An LLC shall provide members and their agents and attorneys access to its records at the LLC's principal executive office or other reasonable location specified in the LLC documents. An LLC shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the periods during which they were members. The right of access provides the opportunity to inspect or copy records during ordinary business hours if the member or its agent or attorney gives the LLC written notice of such demand at least five (5) business days before the date on which the member or its agent or attorney wishes to inspect or copy. An LLC may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished under this subsection (a), except that copies of the LLC documents and records required to be maintained under § [406] shall be copied upon demand and at the LLC's expense.

(b) *Members.* An LLC shall furnish to a member and to the personal representative of a deceased member or member under legal disability:

(1) Without demand, information reasonably required to comply with the requirements of either federal or state tax laws concerning the member's financial rights, if any, and information concerning the LLC's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the LLC documents or this Act; and

(2) On written demand, other information concerning the LLC's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) *Holders of Financial Rights.* Holders of financial rights and their agents and attorneys shall have a limited right of access in order to obtain information reasonably required to comply with

the requirements of either federal or state tax laws concerning their financial rights. The right of access provides the opportunity to inspect or copy records for such purpose during ordinary business hours if the holder of financial rights or its agent or attorney gives the LLC written notice of a demand to inspect or copy the records at least five (5) business days before the date on which the holder of financial rights or its agent or attorney wishes to inspect or copy. An LLC may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(d) *Remedies.* If an LLC does not allow a member that complies with § [308(a)] or a holder of financial rights that complies with § [308(c)], as applicable, to inspect or copy any records required by the applicable subsection to be available for inspection, a court in the county in which the principal executive office of the LLC (or, if none in this state, its registered office) is located summarily may order inspection or copying of the records demanded, at the expense of the LLC, on application of such member or holder of financial rights, as applicable. If the court orders inspection or copying of the records demanded, it also shall order the LLC to pay the costs (including reasonable attorneys fees) of the member or holder of financial rights, as applicable, incurred to obtain the order, if the member or holder of financial rights proves that the LLC refused inspection without a reasonable basis for doubt regarding the right of the member or holder of financial rights to inspect the records demanded. If the court orders inspection or copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member or holder of financial rights, as applicable.

309. Series of Members, Holders, Managers, Directors, Membership Interests or Financial Rights.

(a) *Establishment of Series.* The LLC documents may establish or provide for the establishment of one or more designated series of members, holders, managers, directors, membership interests or financial rights having separate rights, powers and/or duties with respect to specified property and/or obligations of the LLC and/or profits and losses associated with specified property and/or obligations, and any such series may have a separate business purpose or investment objective.

(b) *Separateness of Series.* Notwithstanding anything to the contrary set forth in this Act or under other applicable law, the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series established under subsection (a) shall be enforceable against the assets of such series only, and not against the assets of the LLC generally or any other series thereof, and, unless otherwise provided in the LLC documents, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the LLC generally or any other series thereof shall be enforceable against the assets of such series in the event that:

(1) The LLC documents establish or provide for the establishment of one or more series;

(2) Separate and distinct records are maintained for any such series, and the assets associated with any such series are reflected and held in such separate and distinct records (directly or indirectly, including through a nominee or otherwise) and accounted for in such separate and distinct records separately from the other assets of the LLC and the assets of any other series of the LLC; and

(3) Notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of the LLC.

Notice in the articles of the limitation on liabilities of a series as provided in this subsection shall be sufficient for all purposes of this Act, whether or not the LLC has established any series, when such notice is included in the articles, and there shall be no requirement that any specific series of the LLC be referenced in such notice. The fact that articles that contain the foregoing notice of the limitation on liabilities of a series is on file with the secretary of state shall constitute notice of such limitation on liabilities of a series.

(c) *Voluntary Personal Liability.* Notwithstanding the provisions of § [114(a)], a member may agree to be liable for all of the debts, liabilities and obligations of one or more specified series of an LLC by provision in the articles with respect to such specified series in the manner set forth in § [114(f)]. Such provision in the articles with respect to one or more specified series of an LLC shall not cause the member to be liable for the debts, liabilities and obligations of any of the other series of the LLC.

(d) *Classification of Interests, Voting Rights, etc.* The LLC documents may include the provisions authorized under § [303(a) or (b)], or both, as to the directors, members, managers or holders of financial rights associated with a particular series as if the series were a separate LLC.

(e) *Distributions*. The provisions of § [304], § [305] and § [306] shall apply to a series of an LLC as if the series were a separate LLC.

(f) *Management Duties; Admission of Members; Transfer*. The provisions of Chapters [4 and 5] of this Act shall apply to a series of an LLC as if the series were a separate LLC.

(g) *Termination*. A series of an LLC may be terminated and its affairs wound up without causing the dissolution of the LLC or of any other series of the LLC. All provisions of this Act regarding dissolution or winding up of an LLC, including the rights of members, directors or managers to cause a dissolution of an LLC, shall apply to a series of an LLC as if the series were a separate LLC.

(h) *Events of Termination*. A series of an LLC shall be terminated and its affairs shall be wound up upon the occurrence of the same events or reasons as are provided in this Act for an LLC.

(i) *Series of Foreign LLCs*. If a foreign LLC that is applying for a certificate of authority to transact business in this state or is authorized to transact business in this state is governed by articles, an operating agreement and/or similar equivalent documents that establish or provide for the establishment of designated series of members, directors, managers or interests having separate rights, powers and/or duties with respect to specified property and/or obligations of the foreign LLC and/or profits and losses associated with specified property and/or obligations, that fact shall be so stated in the foreign LLC's application for a certificate of authority to transact business in this state or an amendment of such certificate of authority. In addition, the foreign LLC shall state in such application or amendment, as applicable, whether the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign LLC generally or any other series thereof, and, unless otherwise provided in such application or amendment, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign LLC generally or any other series thereof shall be enforceable against the assets of such series.

#### Chapter 4

#### MANAGEMENT

##### 401. Management of LLC.

(a) *Member-Managed LLC*. In a member-managed LLC:

(1) Each member has equal rights in the management and conduct of the LLC's business; and

(2) Except as otherwise provided in subsections (e) or (f), any matter relating to the business of the LLC shall be decided by a majority vote of the members.

(b) *Manager-Managed LLC*. In a manager-managed LLC:

(1) Each manager has equal rights in the management and conduct of the LLC's business;

(2) Except as otherwise provided in subsections (e) or (f), any matter relating to the business of the LLC shall be exclusively decided by the manager or, if there is more than one (1) manager, by a majority vote of the managers; and

(3) A manager:

(A) Must be designated, appointed, elected, removed, or replaced by a majority vote of the members;

(B) Holds office until a successor has been designated, appointed or elected and qualified, unless the manager sooner resigns or is removed; and

(C) Need not be a member of the LLC.

(c) *Director-Managed LLC*. In a director-managed LLC:

(1) All LLC powers shall be exercised under the authority of, and the business and affairs of the LLC shall be managed under the direction of, its board of directors;



(2) Except as otherwise provided in subsections (e) or (f), any matter relating to the business of the LLC shall be exclusively decided by the director or, if there is more than one director, by a majority vote of the directors; and

(3) A director:

(A) Must be designated, appointed, elected, removed, or replaced by a majority vote of the members;

(B) Holds office until a successor has been designated, appointed or elected and qualified, unless the director sooner resigns or is removed; and

(C) Need not be a member of the LLC.

(d) *President of Director-Managed LLC.* A director-managed LLC must have a president who is appointed or elected by a majority vote of the directors and authorized to act as an agent of the LLC under § [402(d)].

(e) *Delegation.* The LLC documents or the members, managers or directors of an LLC by a resolution or other writing may delegate rights and powers to manage and control the business and affairs of the LLC to one (1) or more officers, agents or employees (who need not be members of the LLC) provided that such delegation is reasonable under the circumstances and made in good faith.

(f) *When Unanimous Consent Required.* The only matters of an LLC's business requiring the consent of all of the members are:

(1) The amendment of an LLC's operating agreement if the LLC documents do not provide for the method by which the operating agreement may be amended, as provided in § [204(c)];

(2) Any amendment of an LLC's articles of organization that requires approval of all the members under § [204(c)];

(3) The compromise of an obligation to make a contribution under § [302(c)];

(4) The compromise, as among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this Act;

(5) The admission of a new member (including without limitation by transfer of any of a member's governance rights to any person not a member as provided in § [508(b)(3)]);

(6) The use of the LLC's property to redeem an interest subject to a charging order; and

(7) An election by an LLC formed prior to January 1, 2006 to be governed by this Act, as provided in § [1002(b)].

(g) *Proxies.* A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument.

#### 402. Agency of Members, Managers, Directors and Officers.

(a) *Member-Managed LLC.* Subject to subsections (d) and (e), in a member-managed LLC:

(1) Each member is an agent of the LLC for the purpose of its business, and an act of a member, including the signing of an instrument in the LLC's name, that is apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC, unless the member had no authority to act for the LLC in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority; and

(2) An act of a member that is not apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC only if the act was authorized by the other members.

(b) *Manager-Managed LLC.* Subject to subsections (d) and (e), in a manager-managed LLC:

(1) A member is not an agent of the LLC for the purpose of its business solely by reason of being a member. Each manager is an agent of the LLC for the purpose of its business, and an act of a manager, including the signing of an instrument in the LLC's name, that is apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC, unless the manager had no authority to act for the LLC in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.

(2) An act of a manager that is not apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC only if the act was authorized under § [401].

(c) *Director-Managed LLC.* Subject to subsections (d) and (e), in a director-managed LLC, no member or director is an agent of the LLC for the purpose of its business solely by reason of being a member or a director. The president and any other authorized officers of a director-managed LLC shall be agents of the LLC as described in subsection (d).

(d) *Authority of Officers.* In a director-managed LLC or any other LLC with a president, the president is an agent of the LLC for the purpose of its business, and an act of president, including the signing of an instrument in the LLC's name, that is apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC, unless the president had no authority to act for the LLC in the particular matter and the person with whom the president was dealing knew or had notice that the president lacked authority. If, under § [401(e)], any other officer of the LLC is authorized by the LLC documents or by the members, managers or directors, as applicable, of an LLC by a resolution or other writing, then the authorized officer is an agent of the LLC for the purpose of its business, and an act of the authorized officer, including the signing of an instrument in the LLC's name, that is apparently for carrying on in the ordinary course the LLC's business or business of the kind carried on by the LLC binds the LLC.

(e) *Real Property Authority.* The articles may contain a grant of authority to one (1) or more members, managers, directors or officers to execute instruments for the transfer of real property, and any restrictions and conditions with respect to such authority. In the event the articles name one (1) or more persons who are granted authority to execute instruments for the transfer of real property with any restrictions and conditions with respect to such authority so listed, such grant shall be conclusive in favor of a person who gives value unless the person knew or had notice that such grant of authority had been rescinded by the LLC. However, such designation, unless it expressly states that it is exclusive, shall not override § [402(a), (b), (c) or (d)].

(f) *Knowledge; Notice.* For purposes of this § [402]:

(1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact if:

(A) The person knows the fact;

(B) The person has received a notification of the fact;

(C) The person has reason to know the fact exists from all of the facts known to the person at the time in question; or

(D) The fact is contained in the articles of organization.

(3) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(4) A person receives a notification of a fact when the notification:

(A) Comes to the person's attention; or

(B) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the entity knows, has notice or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence. An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the

entity and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

403. General Standards of Conduct for Members, Managers, Directors and Officers.

(a) *Member-Managed LLC.* The only fiduciary duties a member owes to a member-managed LLC and the LLC's other members and holders are the duty of loyalty and the duty of care imposed by subsections (b) and (c). A holder of financial rights owes no duties to the LLC or to the other members or holders solely by reason of being a holder of financial rights.

(b) *Duty of Loyalty.* A member's duty of loyalty to a member-managed LLC and the LLC's other members and holders of financial rights is limited to the following:

(1) To account to the LLC and to hold as trustee for it any property, profit or benefit derived by the member in the conduct or winding up of the LLC's business or derived from a use by the member of the LLC's property, including the appropriation of any opportunity of the LLC;

(2) Subject to § [404], to refrain from dealing with the LLC in the conduct or winding up of the LLC's business as or on behalf of a person having an interest adverse to the LLC; and

(3) To refrain from competing with the LLC in the conduct of the LLC's business before the termination of the LLC.

(c) *Duty of Care.* A member's duty of care to a member-managed LLC and the LLC's other members and holders of financial rights in the conduct of and winding up of the LLC's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

(d) *Good Faith and Fair Dealing.* A member shall discharge the member's duties to a member-managed LLC and its other members and holders of financial rights under this Act or under the LLC documents and exercise any rights with respect to the LLC consistently with the obligation of good faith and fair dealing.

(e) *Furtherance of Member's Own Interest.* A member of a member-managed LLC does not violate a duty or obligation under this Act or under the LLC documents merely because the member's conduct also furthers the member's own interest.

(f) *Dealings with LLC.* A member of a member-managed LLC may lend money to and transact other business with the LLC. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(g) *Representative of Surviving Member.* This section applies to a person winding up the LLC's business as the personal representative of the last surviving member as if the person were a member.

(h) *Manager-Managed LLC.* In a manager-managed LLC:

(1) A member owes no duties to the LLC or to the other members or holders of financial rights solely by reason of being a member;

(2) A manager is held to the same standards of conduct prescribed for members in subsections (b) through (f);

(3) A member that, under the LLC documents, exercises some or all of the rights of a manager in the management and conduct of the LLC's business is held to the standards of conduct prescribed for a member in subsections (b) through (f) to the extent that the member exercises the managerial authority vested in a manager by this Act; and

(4) A manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (b) through (f) to the extent of the managerial authority delegated to the members by the LLC documents.

(i) *Director-Managed LLC.* In a director-managed LLC:

(1) A member owes no duties to the LLC or to the other members or holders of financial rights solely by reason of being a member;

(2) A member that, under the LLC documents, exercises some or all of the rights of a director in the management and conduct of the LLC's business is held to the standards of conduct prescribed for a director in this subsection (i) to the extent that the member exercises the managerial authority vested in a director by this Act;

(3) A director is relieved of liability imposed by law for violation of the standards prescribed by this subsection (i) to the extent of the managerial authority of the director delegated to the members by the LLC documents; and

(4) A director shall discharge all duties as a director (including duties as a member of a committee of the board of directors of the LLC):

(A) In good faith;

(B) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(C) In a manner the director reasonably believes to be in the best interests of the LLC.

(j) *Officers.* An officer of an LLC shall discharge all duties as an officer:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the LLC.

(k) *Reliance on Others.* In discharging the duties described in this § [403], a member, manager, director or officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(1) One (1) or more officers or employees of the LLC whom the member, manager, director or officer reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants or other persons as to matters the member, manager, director or officer reasonably believes are within the person's professional or expert competence; or

(3) In the case of a director only, a committee of the board of directors of which the director is not a member, if the director reasonably believes the committee merits confidence.

(l) *Unwarranted Reliance.* A member, manager, director or officer is not acting in good faith if the member, manager, director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (k) unwarranted.

(m) *Limitation on Liability.* A member, manager, director or officer is not liable for any action taken as a member, manager, director or officer, or any failure to take any action, if the member, manager, director or officer performed its duties in compliance with this section.

(n) *Effect of Delegation.* Any officer, agent or employee who exercises some or all of the rights of a member, manager, or director pursuant to a delegation of rights and power under § [401(e)] is held to the same standards of conduct set forth in this § [403] for members, managers or directors, as applicable, to the extent that such officer, agent or employee exercises the delegated rights and powers. A member, manager or director is relieved of liability imposed by law for the standards prescribed in this § [403] to the extent that such person's managerial authority is vested in an officer, agent or employee pursuant to a delegation of rights and power under § [401(e)].

#### 404. Conflict of Interest Transactions.

(a) *Definition.* A conflict of interest transaction is a transaction with the LLC in which a member, manager, director or officer as applicable, of the LLC has a direct or indirect interest. A conflict of interest transaction is not void and is not voidable by the LLC (and does not violate the duty of loyalty in § [403(b)(2)]) solely because of the interest of a member, manager, director or officer in the transaction, if any one (1) of the following is true:

(1) The material facts of the transaction and the interest of the member, manager, director or officer, as applicable, were disclosed or known to the managers or board of directors, as applicable, and the managers or board of directors, as applicable, authorized, approved or ratified the transaction;

(2) The material facts of the transaction and the interest of the member, manager, director or officer, as applicable, were disclosed or known either (i) to the members entitled to vote and they authorized, approved or ratified the transaction, or (ii) to all the members and all the members authorized, approved or ratified the transaction even if one or more or all the members have a conflict of interest;

(3) The transaction was fair to the LLC; or

(4) The transaction was of a nature in which the conflict of interest is waived by the LLC documents. Such waiver shall be upheld unless manifestly unreasonable under the circumstances.

(b) *Indirect Interest.* For purposes of this section, a member, manager, director or officer of the LLC has an indirect interest in a transaction if, but not only if:

(1) Another entity in which the member, manager, director or officer has a material financial interest, or in which the member, manager, director or officer, as applicable, is a general partner, is a party to the transaction; or

(2) Another entity for which the member, manager, director, or officer is a member, governor, director, manager, officer or trustee is a party to the transaction and the transaction is or should be considered by the members, managers or directors, as applicable, of the LLC.

(c) *Approval by Managers or Directors.* For purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved or ratified if it receives the affirmative majority vote of the managers or of the directors on the board of directors, as applicable, who have no direct or indirect interest in the transaction, and a transaction may be authorized, approved or ratified under this section by a single manager or director, as applicable. If a majority of the managers or the directors, as applicable, who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a manager or director, as applicable, with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

(d) *Approval by Members.* For purposes of clause (i) of subsection (a)(2), a conflict of interest transaction is authorized, approved or ratified if it receives a majority vote of the membership interests entitled to be counted under this subsection. Membership interests owned by or voted under the control of a member, director or manager who has a direct or indirect interest in the transaction, and membership interests owned by or voted under the control of an entity described in subsection (b)(1), may not be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under clause (i) of subsection (a)(2). The vote of those membership interests, however, shall be counted in determining whether the transaction is approved under other provisions of this Act.

(e) *Approval by Sole Member of Single-Member LLC.* For purposes of clause (ii) of subsection (a)(2), a conflict of interest transaction may be authorized, approved or ratified by the sole member of a single-member LLC.

#### 405. Voting and Meetings.

(a) *Voting Power.* Each member, manager or director, as applicable, of an LLC shall have equal voting power per capita with each other member, manager or director.

(b) *Procedures.* The LLC documents may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on, consented to or approved by any members, managers or directors, as applicable, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy (in the case of members or managers), or any other matter with respect to the exercise of any such right to vote.

(c) *Action on Written Consent.* On any matter that under this Act or under the LLC documents is to be voted on, consented to or approved by members, managers or directors, as applicable, the members, managers or directors, as applicable, may take such action without a

meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed (i) in the case of the members or managers, by the members or managers, as applicable, having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members or managers, as applicable, entitled to vote thereon were present and voted, or (ii) in the case of the directors, by all directors entitled to vote thereon. A consent transmitted by electronic transmission by a member, manager or director, or by a person or persons authorized to act for the member or manager, as applicable, shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Prompt notice of the taking of LLC action without a meeting by less than unanimous written consent of the members or managers, as applicable, shall be given to any member or manager, as applicable, entitled to vote thereon that did not sign such written consent; provided, however, that the failure to give such notice shall not affect the validity of the action taken.

406. Required Records.

An LLC shall keep at its principal executive office or at another place or places within the United States determined by the members of a member-managed LLC, the managers of a manager-managed LLC or the directors of a director-managed LLC:

- (1) A current list of the full name and last-known business, residence or mailing address of each member, each manager or director, as applicable, and each officer, if any, of the LLC, together with the taxpayer identification number of each member of the LLC;
- (2) A current list of the full name and last-known business, residence or mailing address of each holder of financial rights of the LLC and a description of the financial rights held, together with the taxpayer identification number of each holder of financial rights of the LLC;
- (3) A copy of the articles of the LLC and all amendments to the articles;
- (4) A copy of any currently effective written operating agreement of the LLC;
- (5) Copies of the LLC's federal, state and local income tax returns and reports, if any, for the three (3) most recent years;
- (6) Financial information sufficient to provide true and full information regarding the status of the business and financial condition of the LLC for the three (3) most recent fiscal years;
- (7) Records of all proceedings of the members of the LLC and of the holders, if any, of the LLC;
- (8) Any written consents obtained from the members of the LLC or from the holders, if any, of the LLC;
- (9) Records of all proceedings of the managers or board of directors, as applicable, of the LLC for the last three (3) years;
- (10) A statement of all contributions accepted by the LLC under § [301], the identity of the contributor and the agreed value of each contribution;
- (11) A copy of all contribution agreements created under § [301] to which the LLC is bound; and
- (12) A copy of the LLC's most recent annual report filed with the secretary of state under §[1017].

Chapter 5

ADMISSION OF MEMBERS; MEMBERSHIP INTERESTS; TRANSFEREES AND  
CREDITORS OF MEMBERS

501. Admission of Members.

(a) *Admission at Formation.* In connection with the formation of an LLC, a person is admitted as a member of the LLC upon the later to occur of:

(1) The formation of the LLC under § [201]; or

(2) The time provided in and upon compliance with the LLC documents or, if the LLC documents do not so provide, the time at which the person's admission is reflected in the records of the LLC.

(b) *Admission After Formation.* After an LLC is formed, all members must approve the admission of a new person as a member, the membership interest of such person and the contribution of such person. All consents under this subsection may be unreasonably withheld and are in the sole discretion of the members.

(c) *Single Member LLCs.* An LLC may have one (1) or more members.

502. Nature of Membership Interest and Statement of Interest Owned.

(a) *Nature of Membership Interest.* A membership interest in an LLC is personal property. A member has no interest in specific LLC property. All property transferred to or acquired by an LLC is property of the LLC.

(b) *Statement of Interest Owned.* At the request of any member or holder of financial rights in an LLC, the LLC shall state in writing the particular membership interest or financial rights, or portion thereof, owned by such member or holder as of the time the LLC makes the statement. The statement must describe such person's rights, if any, to vote, to share in profits and losses, and to share in distributions, as well as any transfer of the member's or holder's rights then in effect. The statement shall not be deemed to be a "security," as defined in § 47-8-102(15), except as provided in § 47-8-103(c), shall not be a "negotiable instrument," shall not be deemed to be a "bond" or "stocks," as those terms are used in § 67-2-101, and shall not be a vehicle by which a transfer of any membership interest or financial rights may be effected.

503. Termination of Membership Interest.

(a) *Events Constituting Termination.* A member's membership interest in an LLC is terminated upon the occurrence of any of the following events:

(1) The LLC receives written notice from the member of the member's express will to withdraw upon the date of the notice or on a later date specified by the member in the notice;

(2) An event specified in the LLC documents as causing the member's membership interest to terminate;

(3) The transfer of all of the member's financial rights, unless the transfer is for security purposes and has not been foreclosed or is under a court order charging the member's financial rights;

(4) The member is expelled under the LLC documents;

(5) The member is expelled by unanimous vote of the other members entitled to vote if:

(A) It is unlawful to carry on the business of the LLC with the member;

(B) (i) The member is a corporation or an LLC;

(ii) within ninety (90) days after the LLC notifies the member that it will be expelled because it has filed a certificate of dissolution (or the equivalent), its charter or articles of organization (or the equivalent) have been revoked, or its right to conduct business has been suspended by the jurisdiction of its formation; and

(iii) the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or articles of organization (or the equivalent) or its right to conduct business within such ninety (90) day period; or

(C) The member is a general or limited partnership and has been dissolved and its business is being wound up;

(6) On application by the LLC or another member, the member is expelled by judicial determination because the member:

(A) Engaged in wrongful conduct that adversely and materially affected the LLC's business;

(B) Willfully or persistently committed a material breach of the LLC documents or of a duty owed under § [403] to the LLC or to other members or to holders; or

(C) Engaged in conduct relating to the LLC's business that makes it not reasonably practicable to carry on the business with the member;

(7) The member:

(A) Files a petition as a debtor in bankruptcy;

(B) Executes an assignment for the benefit of creditors;

(C) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator for or of the member or for or of all or substantially all of the member's property; or

(D) Failing, within ninety (90) days after the filing or appointment, to have dismissed the filing against the member of an involuntary petition in bankruptcy or to have vacated or stayed the appointment of a trustee, receiver or liquidator for or of the member or for or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated;

(8) In the case of a member who is an individual:

(A) The member dies;

(B) A personal representative is appointed for the member; or

(C) A judicial determination that the member has become incapable of performing the member's duties under the LLC documents;

(9) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, the distribution of all of the trust's financial rights, but not merely by reason of the substitution of a successor trustee; provided, however, that a distribution to a beneficiary of a trust established under § 2503(c) of the Code or a trust which is treated under § 676 of the Code as owned by the settlor of the trust shall not be considered to be a distribution of financial rights under this subsection;

(10) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of all of the estate's financial rights, but not merely the substitution of a successor personal representative or beneficiary;

(11) In the case of a custodianship under §§ 35-7-201, *et seq.*, or the equivalent law of any foreign jurisdiction, a transfer of the financial rights held by the custodian but not a transfer to the beneficiary for whom the custodian is holding the financial rights; or

(12) Termination of the existence of a member if the member is an entity other than an estate, or trust (other than a business trust).

(b) *Power to Terminate.*

(1) Except as otherwise provided in subsection (b)(2), and subject to § [504], a member has the power and right to terminate such member's membership interest at any time, including, without limitation, upon withdrawal by express will under subsection (a)(1).

(2) No member of a family LLC has either the power or the right to terminate the membership interest or financial rights of such member in such family LLC. No event specified in subsections (a)(1), (a)(3), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11) or (a)(12) shall result in the termination of the family member's membership interest or financial rights. In the event that a member of a family LLC attempts to terminate the member's membership interest or financial rights by withdrawal by express will under subsection (a)(1), such attempted termination shall be null and void.



If the membership interest of a member is terminated by the member in contravention of the LLC documents, then:

(a) *Forfeiture of Governance Rights.* The member forfeits all the member's governance rights in the LLC, including in the winding up and termination process of the LLC; and

(b) *Liability for Damages.* The member is liable for damages incurred by all the other members, holders and the LLC due to the wrongful termination. Such damages and all other amounts owing to the LLC, whether or not currently due, arising from the wrongful termination may be offset against any amount owing from the LLC to the wrongfully terminating member.

505. Effect of Termination of Membership Interest.

(a) *Termination Other Than Under § 503(a)(8).* If a member's membership interest terminates for any reason other than as the result of an event specified in § [503(a)(8)], then:

(1) If the existence and business of the LLC are continued, the member whose membership interest has terminated loses all governance rights and will be considered merely a holder of the financial rights owned before the termination of the membership interest other than any financial rights transferred by the member in connection with the termination of the membership interest; and

(2) If the existence and business of the LLC are not continued, the member whose membership interest has terminated retains all governance rights owned before the termination and may exercise those rights through the winding up and termination of the LLC (except as otherwise provided under § [504] in the case of termination in contravention of the LLC documents).

(b) *Termination § 503(a)(8).* If the membership interest of a member terminates as a result of an event specified in § [503(a)(8)]:

(1) If the existence and business of the LLC are continued, then, effective as of the date of the applicable termination event, the governance rights associated with the affected membership interest are suspended and may not be exercised thereafter unless and until restored under subsection (b)(2). So long as such suspension remains in effect, such member (or the personal representative of such member) will be considered merely the holder of the financial rights owned before the termination under § [503(a)(8)].

(2) If the existence and business of the LLC are continued, for a period of sixty (60) days following the event specified in § [503(a)(8)] that results in the suspension of governance rights under subsection (b)(1), the personal representative of the affected member shall have the option, exercisable by giving written notice to the LLC, to require the LLC to purchase the membership interest of the member whose membership interest has terminated under subsection (c) and § [506]. If the personal representative fails to make such election within such period, then the LLC shall have the option for a period of sixty (60) days following expiration of the personal representative's option (or, if earlier, following the date of written notice from the personal representative that such option will not be exercised) to give written notice to the personal representative that the LLC will purchase the membership interest in accordance with subsection (c) and § [506]. If neither the personal representative nor the LLC elects to exercise their respective options to cause the LLC to purchase the membership interest, the governance rights associated with the membership interest shall be restored effective as of the first day following expiration of the LLC's option period, and the personal representative shall be automatically admitted and substituted as a member of the LLC without further action. If either the personal representative or the LLC elects to cause the LLC to purchase the membership interest, the suspension of governance rights associated with such membership interest shall continue through the time the purchase is consummated.

(3) If the existence and business of the LLC are not continued, the personal representative of the member whose membership interest has terminated retains all governance rights owned by the affected member before the termination of the membership interest and may exercise those rights through the winding up and termination of the LLC (except as otherwise provided under § [504] in the case of termination in contravention of the LLC documents).

(c) *Purchase at Fair Value.* If the existence and business of the LLC are continued following the termination of a membership interest under § [503(a)] other than terminations arising under § [503(a)(3)], § [503(a)(9)], § [503(a)(10)] or § [503(a)(11)], then, regardless whether such termination of membership interest was wrongful, any member whose membership interest has so

terminated (other than a member for whom a personal representative has been automatically substituted and admitted as a member under subsection (b)(2)), is entitled, subject to the offset provisions of § [504(b)], to receive from the LLC the fair value of the terminated membership interest as of the date of termination of such membership interest calculated as set forth in § [506], in consideration for all such membership interest.

(d) *Distribution if Business Not Continued.* Subject to the provisions of § [504(b)], if the business and existence of the LLC are not continued, any member whose membership interest has terminated, regardless of whether such termination was wrongful or otherwise, is entitled to receive that member's distribution under § [620].

#### 506. Determination of Fair Value.

If an LLC is required or elects to purchase a membership interest at fair value under § [505], then:

(a) *Communication by LLC.* The LLC must communicate its determination of fair value, and its proposed terms of payment, to the member (or the member's personal representative) who is entitled to receive payment in consideration for the member's terminated membership interest not later than thirty (30) days after the date of termination or, if applicable, thirty (30) days after the later date of an election made under § [505(b)(2)]. Such communication must be accompanied by:

- (1) A statement of the LLC's assets and liabilities as of the date of termination;
- (2) The LLC's latest available balance sheet and income statement, if any; and
- (3) An explanation of how the determination of fair value was made.

(b) *LLC Documents Govern.* If the amount of fair value and other terms of payment are fixed or are to be determined by the LLC documents, the amount and terms so fixed or determined govern.

(c) *Judicial Determination of Fair Value.*

(1) If an agreement as to the amount of fair value and payment terms is not made within one hundred twenty (120) days after the termination date or, if applicable, the later date of an election made under § [505(b)(2)], either the member whose membership interest has terminated (or the member's personal representative) or the LLC may, within another one hundred twenty (120) days, commence a proceeding against the other to determine the fair value and payment terms. Any such proceeding shall be brought in a court of record having equity jurisdiction in the county where the LLC's principal executive office (or, if not in this state, its registered office) is located. The LLC at its expense shall notify in writing all of the remaining members, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive. The court shall determine the fair value of the membership interest in accordance with the standards set forth in subsection (c)(2) together with the terms for payment.

(2) In a proceeding brought to determine the fair value of a membership interest in an LLC, the court:

(A) Shall enforce any governing terms in the LLC documents as to the amount of fair value and other terms of payment as provided in subsection (b);

(B) In the absence of any such governing terms in the LLC documents, shall determine the fair value of the membership interest, considering, among other relevant evidence, the going concern value of the LLC, any other agreement among any members fixing the price or specifying a formula for determining value of membership interests for any other purpose, the recommendations of an appraiser, if any, appointed by the court, the recommendations of any of the appraisers of the parties to the proceeding, and any legal or financial constraints on the ability of the LLC to purchase the membership interest;

(C) Shall specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the other creditors of the LLC, security (including the purchased membership interest) for a deferred purchase price, and a covenant not to compete or other restriction on the member whose membership interest has terminated;

(D) Shall require, subject to retention of any security interest by the member whose membership interest has terminated under subsection (c)(2)(C) the member whose membership interest has terminated to deliver an instrument of transfer of the membership interest to the LLC upon receipt of the purchase price or the first installment of the purchase price;

(E) May award one (1) or more other parties their reasonable expenses (including attorney's fees and the expenses of appraisers or other experts) incurred in the proceeding if the court finds that a party to the proceeding violated such party's obligations to act in good faith and to engage in fair dealing set forth in § [403(d)]; and

(F) Shall order that interest at the rate specified for judgments under §47-14-121 must be paid on such amount from the date such amount was determined to be due through the date of payment if the court determines that all or any installment of the amounts to be paid in respect of the terminating member's membership interest should have been paid prior to the date of judgment.

#### 507. Transfer of Financial Rights.

(a) *Transferability of Financial Rights.* Except as provided in subsection (c) the financial rights of a member or a holder of financial rights are transferable in whole or in part.

(b) *Effect of Transfer of Financial Rights.* A transfer of the financial rights of a member or a holder of financial rights entitles the transferee to receive, to the extent transferred, only the share of profits and losses and the distributions to which the transferor would otherwise be entitled, together with the right to transfer further the financial rights so transferred. A transfer of the financial rights of a member or a holder of financial rights does not dissolve the LLC and does not entitle or empower the transferee to become a member, cause a dissolution or exercise any governance rights, and any attempt by the transferee to do any of the foregoing shall be null and void.

(c) *Restrictions on Transfer of Financial Rights.*

(1) A restriction on the transfer of financial rights may be imposed in the LLC documents, by a written resolution adopted by all the members, or by a written agreement among, or other written action by, all the members and, if so provided in the LLC documents, holders of financial rights.

(2) A restriction on the transfer of financial rights referenced in subsection (c)(1) is enforceable against the owner of the restricted financial rights. A written restriction on the transfer of financial rights that is set forth in the LLC documents may be enforced against a successor or transferee of the owner of the restricted financial rights, including a pledgee or a personal representative, whether or not such successor or transferee of the owner had actual notice thereof. Except for a written restriction in the LLC documents, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

(d) *Effective Date of Transfer.* Any permissible transfer of financial rights under this section will be effective as to and binding on the LLC only when the transferee's name, address, taxpayer identification number and the nature and extent of the transfer are reflected in the LLC documents or the records of the LLC.

#### 508. Transfer of a Membership Interest or Governance Rights.

(a) *Transferability of Governance Rights.* A member may transfer ownership of the member's full membership interest only by transferring all of the member's governance rights coupled with a transfer to the same transferee of all of the member's financial rights. A member's governance rights are transferable only as provided in this section. A member has no power to transfer all or any part of the member's membership interest except as provided in § [505], § [506] and this section.

(b) *Consents Required for Transfer of Governance Rights.*

(1) A member may, without the consent of any other member, transfer governance rights to another member.

(2) With respect to a single-member LLC, the single member may freely transfer governance rights and/or membership interests in the LLC to any other person at any time.

(3) Any other transfer of any governance rights is effective only if all of the members, other than the member seeking to make the transfer, approve the transfer by unanimous consent. The consent of a member may be evidenced in any manner specified in the LLC documents, but in the absence of such specification, consent shall be evidenced by a written instrument, dated and signed by such member. The giving of consent is at the sole discretion of the consenting party and may be unreasonably withheld.

(4) If any purported or attempted transfer of governance rights is ineffective for failure to obtain the required consents, the purported or attempted transfer is ineffective in its entirety and any transfer of financial rights that accompanied the purported or attempted transfer of governance rights is null and void.

(c) *Effect of Transfer of Governance Rights.* When a transfer, other than a transfer for security purposes, of governance rights is effective:

(1) The transferee becomes a member, if not already a member;

(2) If the transferor does not retain any governance rights, the transferor ceases to be a member;

(3) A transferee that has become a member has, to the extent transferred, the rights and powers and is subject to the restrictions and liabilities, of a member under the LLC documents and this Act;

(4) Any obligations of the transferor existing at the time of transfer to make contributions to the LLC under § [302] are not binding on a transferee without knowledge of such obligations at the time the transferee became a member;

(5) Any obligations of the transferor under § [307] to return wrongful distributions are not binding on a transferee without knowledge of such obligations at the time the transferee became a member; and

(6) The transferor is not released from liability to the LLC for obligations of the transferor existing at the time of transfer under § [302] or § [307].

(d) *Pledges of Membership Interests.* The pledge of, or granting of a security interest, lien or other encumbrance in or against, all or any portion of the membership interest of a member is not a transfer of ownership and shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member. The foreclosure of such a pledge, security interest, lien or other encumbrance shall have the effect of the transfer of the financial rights derived from such membership interest and is subject to the provisions of § [507(b)].

(e) *Consensual Restrictions on Transfer of Governance Rights.* In addition to restrictions set forth in this chapter, restrictions on the transfer of governance rights may be imposed in accordance with the procedures and under the same conditions as stated in § [507], for restricting the transfer of financial rights.

(f) *Effective Date of Transfer.* Any permissible transfer of governance rights or membership interests under this section will be effective as to and binding on the LLC only when the transferee's name, address, taxpayer identification number and the nature and extent of the transfer are reflected in the LLC documents or the records of the LLC.

#### 509. Rights of Judgment Creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member or holder of financial rights, the court may charge such person's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee of such person's financial rights under § [507]. This section does not deprive any member, holder or transferee of financial rights of the benefit of any exemption laws applicable to the membership interest or financial rights. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest or financial rights.

### Chapter 6

#### DISSOLUTION AND WINDING UP OF THE LLC

#### 601. Dissolution.

(a) *Events Causing Dissolution.* An LLC is dissolved upon the first to occur of the following:

(1) If a period is fixed in the LLC articles for the duration of the LLC, upon the expiration of that period, but if no such period is set forth in the LLC articles, then the LLC shall have a perpetual existence;

(2) The occurrence of an event specified in the LLC documents;

(3) An action of the members in accordance with § [603];

(4) An action of the organizers under § [602];

(5) An order of a court under § [616] or § [617];

(6) An action of the secretary of state under § [605];

(7) At any time there are no members if (i) the LLC files a notice of dissolution as provided in § [609] within ninety (90) days after the occurrence of the event that terminated the membership interest of the last remaining member, which notice of dissolution may be signed on behalf of the LLC by the personal representative of the last remaining member, (ii) the LLC documents specify that the termination of the membership interest of the last remaining member dissolves the LLC; provided, that if such notice of dissolution is not filed or the LLC documents do not provide for dissolution in that event, the LLC is not dissolved and is not required to be wound up and the personal representative of the last remaining member is automatically substituted as a member for the last remaining member effective as of the occurrence of the event that terminated the membership interest of the last remaining member. Notwithstanding the foregoing, the LLC documents may specify that any person may be substituted as a member for the last remaining member effective as of the date of the event that causes the termination of membership interest of the last remaining member.

(b) *Events Not Causing Dissolution.* The termination, dissociation, death, incapacity, withdrawal, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the membership interest of any member shall not cause the LLC to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the LLC shall be continued without dissolution.

(c) *Effect of Dissolution.* An LLC dissolved by any of the dissolution events specified in subsection (a) shall be wound up and its existence shall be terminated as provided in this chapter.

#### 602. Nonjudicial Termination by Organizers.

(a) *Articles of Termination.* An LLC that has not accepted contributions may be dissolved and its existence terminated by the organizers if a majority of the organizers shall sign and file with the secretary of state articles of termination containing:

(1) The name of the LLC;

(2) The date of formation of the LLC;

(3) A statement that contributions have not been accepted by the LLC; and

(4) A statement that no debts of the LLC remain unpaid.

(b) *Effectiveness of Termination.* When the articles of termination have been filed with the secretary of state, the existence of the LLC is terminated.

#### 603. Nonjudicial Dissolution by Members.

(a) *Manner of Dissolution.* An LLC may be dissolved by the members:

(1) Upon any event of dissolution set forth in the LLC documents or this Act requiring member action;

(2) By any procedures set forth in the LLC documents; or

(3) By the members when authorized in the manner set forth in this section.

(b) *Approval.*

(1) The proposed dissolution of the LLC must be submitted for approval at a meeting of members. Notice in accordance with this Act and the LLC documents shall be given to each member, whether or not entitled to vote at a meeting of members, and whether the meeting is a regular or a special meeting. Such notice must state that a purpose of the meeting is to consider dissolving the LLC and that dissolution must be followed by the winding up and termination of the LLC.

(2) If the proposed dissolution of the LLC is approved at a meeting of the members by a majority vote or such other vote as may be provided for in the LLC documents, the LLC must be dissolved and notice of dissolution shall be filed with the office of the secretary of state under § [609].

#### 604. Grounds for Administrative Dissolution.

(a) The secretary of state may commence a proceeding under § [605] to administratively dissolve the LLC if:

(1) The LLC does not deliver its properly completed annual report to the secretary of state within two (2) months after it is due;

(2) The LLC is without a registered agent or registered office in this state for two (2) months or more;

(3) The name of an LLC contained in a document filed under this Act fails to comply with the provisions of § [106];

(4) The LLC does not notify the secretary of state within two (2) months that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) The LLC submits to the secretary of state's office a check, bank draft, money order or other such instrument, for payment of any fee and it is dishonored upon presentation for payment; or

(6) A director, officer, manager, member or other representative of an LLC signed a document such person knew was false in any material respect with the intent that the document be filed with the secretary of state.

#### 605. Procedure for and Effect of Administrative Dissolution.

(a) *Notice of Grounds.* If the secretary of state determines that one (1) or more grounds exist under § [604] for dissolving an LLC, the secretary of state shall serve the LLC with written communication of the secretary of state's determination in accordance with § [113(a)], except that determination may be sent by first class mail.

(b) *Dissolution After Notice.* If the LLC does not correct each ground for administrative dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after the secretary of state's service of the communication of the determination in the same manner as is permitted under subsection (a), the secretary of state shall administratively dissolve the LLC by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the LLC in the same manner as is permitted under subsection (a).

(c) *Effect of Administrative Dissolution.* An LLC that has been administratively dissolved continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under § [601] and notify claimants under § [611].

(d) *Effect on Registered Agent and Registered Office.* The administrative dissolution of an LLC does not terminate the designation or authority of its registered agent or registered office.

#### 606. Reinstatement Following Administrative Dissolution.

(a) *Application for Reinstatement.* An LLC administratively dissolved under § [605] may apply to the secretary of state for reinstatement following administrative dissolution. The application must:

(1) State the name of the LLC at its date of administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State a name for the LLC that satisfies the requirements of § [106].

(b) *Certificate of Reinstatement.*

(1) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the LLC in accordance with § [113(a)], except that the copy of the certificate may be sent by first class mail.

(2) If the LLC name in subsection (a)(3) is different than the LLC name in subsection (a)(1), the application for reinstatement shall constitute an amendment to the articles of the LLC insofar as it pertains to the LLC's name.

(c) *Relation Back of Reinstatement.* When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the LLC resumes carrying on its business as if the administrative dissolution had never occurred.

607. Appeal From Denial of Reinstatement.

(a) *Notice of Denial.* If the secretary of state denies an LLC's application for reinstatement following administrative dissolution, the secretary of state shall serve the LLC in accordance with § [113(a)] with a written notice that explains the reason or reasons for denial.

(b) *Appeal Procedure.* The LLC may appeal the denial of reinstatement to the chancery court of Davidson County within thirty (30) days after service of the notice of denial. The LLC appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the LLC's application for reinstatement, and the secretary of state's notice of denial.

(c) *Order of Reinstatement.* The court may summarily order the secretary of state to reinstate the dissolved LLC or may take other action the court considers appropriate.

(d) *Appeal of Court Decision.* The court's final decision may be appealed as in other civil proceedings.

608. Articles of Termination Following Administrative Dissolution.

(a) *Submission of Articles of Termination.* When an LLC that has been administratively dissolved wishes to terminate its existence, it may do so without first being reinstated by delivering to the secretary of state for filing articles of termination following administrative dissolution setting forth:

(1) The name of the LLC;

(2) The date that termination of LLC existence was authorized;

(3) That the resolution authorizing termination was duly adopted by the members;

(4) A copy of the resolution or the written consent authorizing the termination;  
and

(5) That all the assets of the LLC have been distributed to its creditors, members and holders.

(b) *Filing and Effect of Articles of Termination.* If the secretary of state finds that the articles of termination following administrative dissolution comply with the requirements of subsection (a), the secretary of state shall file the articles of termination following administrative dissolution. Upon such filing, the existence of the LLC shall cease, except that the termination of LLC existence shall not take away or impair any remedy to or against the LLC or its members, directors, managers or officers for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the LLC may be prosecuted or defended by the LLC in its LLC name. The members, directors, managers or officers shall have the power to take such LLC or other action as may be appropriate to protect such remedy, right or claim.

609. Filing Notice of Dissolution and Effect.

(a) *Notice of Dissolution.* If dissolution of the LLC is approved under § [603], or if it occurs under § [601(a)(1), (2) or (7)], the LLC shall file with the secretary of state a notice of dissolution. The notice must contain:

(1) The name of the LLC; and

(2) (A) If the dissolution is approved under § [603(b)], a statement that the requisite vote of the members was received, or that members validly took action without a meeting;

(B) If the dissolution occurs under § [601(a)(1)], by the expiration of the LLC's duration, a statement of the expiration date; or

(C) If the dissolution occurs under § [601(a)(2) or (7)], a brief statement of the event that caused the dissolution and the date of that event.

(b) *Effect of Dissolution.* When the notice of dissolution has been filed with the secretary of state, the LLC shall cease to carry on its business, except to the extent necessary or appropriate for the winding up and termination of the business and affairs of the LLC. The members shall retain the right to revoke the dissolution in accordance with § [613] and the right to remove or appoint directors, managers or officers. The LLC's existence continues to the extent necessary to wind up the affairs of the LLC until the dissolution is revoked or articles of termination are filed with the secretary of state.

(c) *Merger of Dissolved LLC.* As part of winding up, the LLC may participate in a merger under chapter [7] of this Act, but the dissolved LLC shall not be the surviving entity.

(d) *Remedies Preserved.* The filing with the secretary of state of a notice of dissolution does not affect any remedy in favor of the LLC or any remedy against it or its members, directors, managers or officers in those capacities, except as provided in § [611].

#### 610. Procedure in Winding Up.

(a) *Winding Up by Merger.* If the business of the LLC is wound up and terminated by the merger of the dissolved LLC into a surviving entity:

(1) The procedures stated in § [702] must be followed; and

(2) §§ [609,] [611,] [612,] [613] and [620] do not apply.

(b) *Winding Up Other Than by Merger.* If the business of the LLC is to be wound up and terminated other than by the merger of the dissolved LLC into a surviving entity, the procedures stated in subsections (c)-(e) must be followed.

(c) *Debts of Dissolved LLC.* When a notice of dissolution has been filed with the secretary of state, the members of a member-managed LLC, the managers of a manager-managed LLC, or the board of directors of a director-managed LLC, as applicable, shall proceed as soon as possible to:

(1) Collect or make provision for the collection of all known debts due or owing to the LLC, including unperformed contribution agreements; and

(2) Except as provided in § [611], pay or make provision for the payment of all known debts, obligations, and liabilities of the LLC according to their priorities under § [620].

(d) *Sale of Assets.* Notwithstanding § [705], when a notice of dissolution has been filed with the secretary of state, the managers of a manager-managed LLC or the board of directors of a director-managed LLC may sell, lease, transfer or otherwise dispose of all or substantially all of the property and assets of a dissolved LLC without a vote of the members.

(e) *Distribution of Remaining Assets.* All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the LLC must be distributed to the members and holders of financial rights in accordance with § [620], subject to § [305(d)].

#### 611. Known and Unknown Claims Against LLC.

(a) *Notice to Creditors.* When a notice of dissolution has been filed with the secretary of state, and the business of the LLC is to be wound up and terminated by other than merger of the dissolved LLC into a successor entity under § [610(a)], then the LLC may give notice of the filing to



each creditor of and claimant against the LLC, known or unknown, present or future, and contingent or non-contingent, in accordance with subsections (b) and (c).

*(b) Disposition of Known Claims.*

(1) An LLC may dispose of the known claims against it by following the procedure described in this subsection.

(2) The dissolved LLC shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(A) Describe information that must be included in a claim;

(B) State whether the claim is admitted, or not admitted, and if admitted:

(i) The amount that is admitted, which may be as of a given date; and

(ii) Any interest obligation if fixed by an instrument of indebtedness.

(C) Provide a mailing address where a claim may be sent;

(D) State the deadline, which may not be fewer than four (4) months from the effective date of the written notice, by which the dissolved LLC must receive the claim; and

(E) State that, except to the extent that any claim is admitted, the claim will be barred if written notice of the claim is not received by the deadline.

(3) A claim against the dissolved LLC is barred to the extent that it is not admitted:

(A) If the dissolved LLC delivered written notice to the claimant in accordance with subsection (b)(2) and the claimant does not deliver a written notice of the claim to the dissolved LLC by the deadline; or

(B) If the dissolved LLC delivered written notice to the claimant that the claimant's claim is rejected, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within three (3) months from the effective date of the rejection notice.

(4) For purposes of this subsection (b), "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(5) For purposes of this subsection (b), written notice is effective at the earliest of the following:

(A) When received;

(B) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed thereon;

(C) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(D) Twenty (20) days after deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

*(c) Notice by Publication.*

(1) A dissolved LLC may also publish notice of its dissolution and request that persons with claims against the LLC present them in accordance with the notice.

(2) The notice must:

(A) Be published one (1) time in a newspaper of general circulation in the county where the dissolved LLC's principal executive office is or was last located;

(B) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(C) State that a claim against the LLC will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(3) If the dissolved LLC publishes a newspaper notice as provided in this subsection (c), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved LLC within two (2) years after the publication date of the newspaper notice:

(A) A claimant who did not receive written notice under § [611(b)];

(B) A claimant whose claim was timely sent to the dissolved LLC but not acted on; or

(C) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this subsection (c):

(A) Against the dissolved LLC, to the extent of its undistributed assets; or

(B) If the assets have been distributed in liquidation, against a member or holder of financial rights of the dissolved LLC to the extent of the member's or holder's pro rata share of the claim or the LLC assets distributed to the member or holder in liquidation, whichever is less, but a member's or holder's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the member or holder.

(d) *Effect of Noncompliance.* If the dissolved LLC does not comply with the provisions of subsections (b) and (c), then claimants against the LLC not barred by this section may enforce their claims:

(1) Against the dissolved LLC to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member or holder of financial rights of the dissolved LLC to the extent of the member's or holder's pro rata share of the claim or the LLC assets distributed to the member or holder in liquidation, whichever is less, but a member's or holder's total liability for all claims under this section may not exceed the total amount of assets distributed to the member or holder; provided, that a claim may not be enforced against a member or holder of a dissolved LLC who received a distribution in liquidation after three (3) years from the date of the filing of articles of termination.

## 612. Articles of Termination.

(a) *When Filed.* Articles of termination shall be filed with the secretary of state upon the dissolution and the completion of winding up of the LLC.

(b) *Contents.* Articles of termination shall set forth:

(1) The name of the LLC;

(2) The date of filing of its articles of organization;

(3) The reason for the filing of the articles of termination;

(4) Whether known and potential creditors and claimants have been notified of the dissolution under § [611]; and

(5) Any other information which the person filing the articles of termination determines necessary or desirable to include.

613. Revocation of Dissolution.

(a) *When Revocation Permitted.* In the case of dissolution by the members as provided in § [601(a)(3)], an LLC may revoke its dissolution at any time prior to the filing of the articles of termination with the secretary of state, except as provided in subsection (d).

(b) *Approval.* Revocation of dissolution shall be authorized by the same vote of the members required to approve the dissolution, unless the authorization for dissolution permitted revocation by action by the board of directors or managers alone, as applicable, in which event the board of directors or managers, as applicable, may revoke the dissolution without member action.

(c) *Articles of Revocation.* After the revocation of dissolution is authorized, the LLC may revoke the dissolution by filing with the secretary of state articles of revocation of dissolution that set forth:

(1) The name of the LLC;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the directors of a director-managed LLC or the managers of a manager-managed LLC revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors or managers alone, as applicable, pursuant to that authorization; and

(5) If member action was required to revoke the dissolution, a statement that the resolution was duly adopted by the members and a copy of the resolution or the written consent authorizing the revocation of dissolution.

(d) *Revocation Where LLC Winding Up by Merger.* If a dissolved LLC is being wound up and terminated by being merged into a successor entity under § [610(a)], under an agreement or plan of merger under § [702], then the dissolution may be revoked under this section only if the merger has been properly abandoned as expressly provided for under § [702(k)].

614. Effective Date and Effect of Articles of Termination.

When the articles of termination have been filed with the secretary of state, the existence of the LLC is terminated, except that the termination of LLC existence shall not take away or impair any remedy of or against the LLC or its members, directors, managers or officers for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the LLC may be prosecuted or defended by the LLC in its LLC name. The members, directors, managers or officers, as applicable, shall have the power to take such LLC or other action as may be appropriate to protect such remedy, right or claim.

615. Supervised Winding Up and Termination Following a Nonjudicial Dissolution.

After an event of dissolution has occurred and before articles of termination have been filed, the LLC or, for good cause shown, a member or creditor may apply to a court within the county in which the LLC's principal executive office is or was last located to have the dissolution conducted or continued under the supervision of the court as provided in §§ [616 - 619].

616. Judicial Intervention.

A court may grant any equitable relief it considers just and reasonable under the circumstances, may dissolve an LLC and/or may direct that the dissolved LLC be merged into another or new LLC or other entity, or otherwise be terminated, on the terms and conditions the court deems equitable.

617. Judicial Dissolution and Termination.

(a) *Judicial Decree.* On application by the attorney general and reporter or by or for a member, the court may decree dissolution, winding up and termination of an LLC whenever it is not reasonably practicable to carry on the business in conformity with the LLC documents.

(b) *Effectiveness of Dissolution.* The dissolution is effective upon the decree of dissolution becoming final and non-appealable. Such decree shall be filed with the secretary of state and shall serve as a notice of dissolution.

(c) *Effectiveness of Termination.* The termination is effective upon a decree of termination becoming final and non-appealable. Such decree shall be filed with the secretary of state and shall serve and have the same effect as articles of termination.

618. Procedure for Judicial Dissolution and Termination.

(a) *Venue.* Venue for a proceeding by the attorney general and reporter to dissolve, wind up and terminate an LLC lies in Davidson County. Venue for a proceeding brought by any other person lies in the county where the LLC's principal executive office is or was last located.

(b) *Members Not Necessary Parties.* It is not necessary to make members parties to a proceeding to dissolve, wind up and terminate the existence of an LLC unless relief is sought against them individually.

(c) *Remedies.* A court in a proceeding brought to dissolve, wind up and terminate an LLC may issue injunctions, appoint a receiver or custodian *pendente lite* with all powers and duties the court directs, as provided in § [619], take other action required to preserve the LLC's assets wherever located, and carry on the business of the LLC until a full hearing can be held.

(d) *Bond.* In a proceeding for dissolution, winding up and termination of the existence of an LLC by a member, the petitioner shall execute and file in the proceeding a bond, with sufficient surety, to cover the defendant's probable costs, including reasonable attorney fees, in defending the petition. The court shall determine the amount of the bond and may award to any party its reasonable costs, including attorney fees, if it finds for such party in the proceeding.

619. Receivership or Custodianship.

(a) *Judicial Appointment.* A court having equity jurisdiction in a judicial proceeding brought to dissolve, wind up and terminate the existence of an LLC may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage the business and affairs of the LLC. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the LLC and all of its property wherever located.

(b) *Eligibility.* The court may appoint an individual or a domestic or foreign entity (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) *Powers and Duties.* The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) A receiver may:

(A) Dispose of all or any part of the assets of the LLC wherever located, at a public or private sale, if authorized by the court; and

(B) Sue and defend in the receiver's own name as receiver of the LLC in all courts of this state.

(2) A custodian may exercise all of the powers of the LLC, through or in place of its members, board of directors, managers, or officers, as applicable, to the extent necessary to manage the affairs of the LLC in the best interests of its members, holders and creditors.

(d) *Combined Functions.* The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the LLC and its members, holders and creditors.

(e) *Compensation.* The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the LLC or proceeds from the sale of the assets.

620. Disposition Upon Liquidation.

(a) *Distribution of Assets.* Upon the winding up of an LLC, the assets shall be distributed as follows:

(1) First, to creditors, including members and holders of financial rights who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the LLC (whether by payment or the making of reasonable provisions for payment thereof) other than:

(A) Liabilities for which reasonable provision for payment has been made; and

(B) Liabilities for distributions to members and holders of financial rights under § [305];

(2) Second, to members, former members and holders of financial rights in satisfaction of liabilities for distributions under § [305]; and

(3) Third, to members and holders of financial rights, first, for the return of their contributions which have not previously been returned, and, second, respecting the membership interests of members and the financial rights of holders of financial rights, as applicable, in the proportions in which the members and holders of financial rights, as applicable, share in distributions under § [305].

(4) Any distributions in any form other than cash shall be subject to § [305(d)].

(b) *Provisions for Claims.* An LLC which has dissolved shall pay or make reasonable operating provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the LLC regardless of whether the identity of the claimant is known. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available for payment. Any remaining assets shall be distributed as provided in this Act. Any receiver or custodian winding up an LLC's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved LLC by reason of the receiver's or custodian's actions in winding up the LLC.

(c) *Debts Incurred During Winding Up.* All known contractual debts, obligations, and liabilities incurred in the course of winding up and terminating the LLC's affairs must be paid or provided for by the LLC before the distribution of assets to a member or holder of financial rights. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the members, directors, managers or officers of the LLC, as applicable, who are responsible for, but who fail to cause, the LLC to pay or make provision for payment of the debts, obligations, and liabilities or against members or holders of financial rights to the extent permitted under § [307]. This subsection does not apply to dissolution, winding up or termination of the existence under the supervision or order of a court.

#### 621. Omitted Assets.

Title to assets remaining after payment of all debts, obligations, and liabilities and after distributions to members and holders of financial rights may be transferred by a court in this state.

#### 622. Right to Sue or Defend After Termination.

After the existence of an LLC has been terminated, any of its former managers, directors, officers or members may assert or defend, in the name of the LLC, any claim by or against the LLC.

### Chapter 7

#### MERGER, CONVERSION AND TRANSFER OF ASSETS

#### 701. Chapter Definitions.

As used in this chapter [7]:

(a) *Other Entity.* The terms "other entity" and "another entity" each mean any domestic entity (other than a domestic LLC) or foreign entity, whether formed under the laws of this state, the laws of any other, the laws of the United States or the laws of any foreign country or other foreign jurisdiction.

(b) *Domestic Entity.* The term "domestic entity" means any entity formed under the laws of this state.

(c) *Foreign Entity.* The term "foreign entity" means any entity formed under the laws of any state of the United States other than this state, the laws of the United States or the laws of any foreign country or other foreign jurisdiction.

#### 702. Merger.

(a) *General.* One (1) or more domestic LLCs may, under an agreement or plan of merger, merge with or into one (1) or more domestic LLCs or other entities by complying with this section. Any constituent party to the merger may be the surviving entity as the agreement or plan of merger shall provide.

(b) *Compliance with Other Applicable Law.* If any constituent party to a merger is a foreign entity, the merger must be permitted under the laws of the jurisdiction of the foreign entity, and the foreign entity must comply with such laws. If any constituent party to a merger is a domestic entity, the merger must be permitted under the other laws of this state that apply to the domestic entity, and the domestic entity must comply with such laws.

(c) *Approval.* The agreement or plan of merger must be approved on behalf of any domestic LLC that is a constituent party to the merger by:

(1) A majority vote of the managers, if the LLC is a manager-managed LLC, or a majority vote of the directors, if the LLC is a director-managed LLC; and

(2) A majority vote of the members, whether the LLC is a member-managed LLC, a manager-managed LLC or a director-managed LLC.

(d) *Merger Consideration.* In connection with a merger under this section, rights or securities of or other equity interests in a domestic LLC or other entity that is a constituent party to the merger may be exchanged for or converted into cash, property, rights or securities of or interests in the surviving domestic LLC or other entity or, in addition to or in lieu of that merger consideration, may be exchanged for or converted into cash, property, rights or securities of or interests in a domestic LLC or other entity that is not the surviving domestic LLC or other surviving entity in the merger.

(e) *Certificate of Merger.* A domestic LLC merging under this section shall file with the secretary of state a certificate of merger. The certificate of merger shall state the following:

(1) The name and jurisdiction of each constituent party to the merger;

(2) That an agreement or plan of merger has been approved and executed by each constituent party to the merger;

(3) The name of the surviving constituent party;

(4) In the case of a merger in which a domestic LLC is the surviving entity, such amendments, if any, to the articles of organization of the surviving domestic LLC as are desired to be effected by the merger;

(5) The future effective date or time of the merger if it is not to be effective upon the filing of the certificate of merger;

(6) That the agreement or plan of merger is on file at a place of business of the surviving constituent party and the address of that place of business;

(7) That a copy of the agreement or plan of merger will be furnished by the surviving constituent party, on request and without cost, to any person holding an interest in a constituent party to the merger; and

(8) If the surviving entity is a foreign entity, a statement that the surviving foreign entity agrees that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic LLC that is a constituent party to the merger, irrevocably appointing the secretary of state as its agent to accept service of process in any such proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state. (In the event of service under this subsection upon the secretary of state, the procedures set forth in § [113] shall be applicable, except that the plaintiff in any such proceeding shall furnish the secretary of state with the address specified in the certificate of merger provided for in this subsection and any other address that the plaintiff may elect to furnish, together with copies of the process as required by the secretary of state, and the secretary of state shall notify the surviving other entity at all the addresses furnished by the plaintiff in accordance with the procedures set forth in § [113].)

(f) *Effective Time.* Unless a future effective date or time is provided in a certificate of merger, in which event a merger shall be effective at that future effective date or time, a merger shall be effective upon filing a certificate of merger with the secretary of state.

(g) *Effect on Nonsurviving Domestic LLC.* A certificate of merger as filed with the secretary of state shall act as notice of dissolution and articles of termination for a domestic LLC that is not the surviving entity in the merger. A merger of a domestic LLC, including a domestic LLC that is not the surviving entity in the merger, shall not require the domestic LLC to wind up its affairs under § [610] or pay its liabilities and distribute its assets under § [620].

(h) *Amendment of Articles or Organization.* A certificate of merger that sets forth any amendment in accordance with subsection (e)(4) shall be deemed to be an amendment to the articles of organization of the surviving domestic LLC, and the surviving domestic LLC shall not be required to take any further action to amend its articles of organization under § [204] with respect to the amendments set forth in the certificate of merger.

(i) *Amendment of Operating Agreement.* An agreement or plan of merger approved in accordance with subsection (c) may effect any amendment to the operating agreement of the surviving LLC in the merger or the adoption of a new operating agreement for the surviving LLC in the merger, provided that the amendment or new operating agreement receives the approval required for amendment of the operating agreement under § [204(c)]. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to the foregoing sentence shall be effective at the effective date and time of the merger.

(j) *Effect of Merger.* When any merger has become effective under this section, for all purposes of the laws of this state:

(1) All of the rights, privileges and powers of each constituent party to the merger and all property (real, personal and mixed) of and all debts due to any constituent party to the merger, as well as all other things and causes of action belonging to each constituent party to the merger, shall be vested in the surviving constituent party and thereafter shall be the property of the surviving constituent party as they were of each constituent party to the merger prior to the merger;

(2) The title to any real property vested by deed or otherwise in any constituent party to the merger shall not revert or be in any way impaired by reason of this section;

(3) All rights of creditors and all liens upon any property of any constituent party to the merger shall be preserved unimpaired;

(4) All debts, liabilities and obligations of each of the constituent parties that have merged shall thenceforth attach to the surviving constituent party and may be enforced against it to the same extent as if said debts, liabilities and obligations had been incurred or contracted by it; and

(5) A proceeding pending against an entity that is a constituent party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party for any entity whose existence ceased in the merger.

(k) *Abandonment of Merger.* After an agreement or plan of merger has been approved as required by this section, and at any time before the merger has become effective, the merger may be abandoned (subject to any contractual rights) by any entity that is a constituent party to the merger in accordance with the procedures set forth in the agreement or plan of merger or, if no such procedures are set forth in the agreement or plan of merger, (1) by any domestic LLC that is a constituent party to the merger in a manner determined by the members with respect to a member-managed LLC, by the managers with respect to a manager-managed LLC or by the directors with respect to a director-managed LLC, and (2) by another entity that is a constituent party to the merger in accordance with applicable law with respect to the other entity. If the merger is abandoned after the certificate of merger has been filed with the secretary of state but before the merger has become effective, a statement, executed by each constituent party to the merger, stating that the merger has been abandoned in accordance with the agreement or plan of merger or this section, shall be filed with the secretary of state prior to the effectiveness of the merger.

(l) *Nonexclusivity.* This section is nonexclusive. A domestic LLC may be merged in any other manner provided by law.

### 703. Conversion to LLC.

(a) *General.* Any other entity may convert to a domestic LLC by complying with this section and filing with the secretary of state:

(1) A certificate of conversion to a domestic LLC; and

(2) Articles of organization that comply with § [202] of this Act.

(b) *Contents of Certificate of Conversion.* The certificate of conversion to a domestic LLC shall state the following:

- (1) The jurisdiction and type of entity of the converting other entity immediately prior to its conversion to a domestic LLC;
- (2) The name of the converting other entity immediately prior to the filing of the certificate of conversion to a domestic LLC;
- (3) The name of the domestic LLC as set forth in its articles of organization filed in accordance with subsection (a);
- (4) That all required approvals of the conversion have been obtained by the converting other entity; and
- (5) The future effective date or time of the conversion to a domestic LLC if it is not to be effective upon the filing of the certificate of conversion to a domestic LLC and the articles of organization.

(c) *Status of Converted Entity.* Upon the filing with the secretary of state of the certificate of conversion to a domestic LLC and the articles of organization of the domestic LLC or upon the future effective date or time of the certificate of conversion to a domestic LLC and the articles of organization of the domestic LLC, the other entity shall be converted into a domestic LLC, and the domestic LLC shall thereafter be subject to all of the provisions of this Act, except that notwithstanding § [201], the existence of the domestic LLC shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first formed.

(d) *Result of Conversion.* The conversion of any other entity into a domestic LLC shall not be deemed to affect any debts, liabilities, and obligations of the other entity incurred prior to its conversion to a domestic LLC or the personal liability of any person incurred prior to the conversion.

(e) *Effects of Conversion.* When any conversion of another entity to a domestic LLC has become effective under this section, for all purposes of the laws of this state:

- (1) The domestic LLC shall be deemed to be the same entity as the converting other entity;
- (2) All of the rights, privileges and powers of the converting other entity and all property (real, personal and mixed) of and all debts due to the converting other entity, as well as all other things and causes of action belonging to the converting other entity, shall be and remain vested in the domestic LLC and shall be the property of the domestic LLC;
- (3) The title to any real property vested by deed or otherwise in the converting other entity shall not revert or be in any way impaired by reason of this section;
- (4) All rights of creditors and all liens upon any property of the converting other entity shall be preserved unimpaired;
- (5) All debts, liabilities and obligations of the converting other entity shall remain attached to the domestic LLC and may be enforced against it to the same extent as if said debts, liabilities and obligations had originally been incurred or contracted by it in its capacity as a domestic LLC;
- (6) Any proceeding pending against the converting other entity may be continued against the domestic LLC as if the conversion had not occurred; and
- (7) The rights, privileges, powers and interests in property of the converting other entity, as well as the debts, liabilities and obligations of the converting other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic LLC for any purpose of the laws of this state.

(f) *No Dissolution or Winding Up.* The converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting other entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic LLC.

(g) *Compliance With Other Applicable Law.* If the converting other entity is a foreign entity, the conversion must be permitted under the laws of the jurisdiction of the converting other entity and



the converting other entity must comply with such laws. If the converting other entity is a domestic entity, the conversion must be permitted under the other laws of this state that apply to the domestic entity, and the domestic entity must comply with such laws.

(h) *Approval.* Prior to filing a certificate of conversion of another entity to a domestic LLC with the secretary of state:

(1) The conversion shall be approved in the manner provided for by applicable laws of the jurisdiction of the converting other entity and by any document, instrument, agreement or other writing governing the internal affairs of the other entity and the conduct of its business, as appropriate; and

(2) The articles of organization and operating agreement, as applicable, for the domestic LLC, shall be approved by the same authorization required for the converting other entity to approve the conversion.

(i) *Exchange or Conversion of Interests.* In connection with a conversion of another entity to a domestic LLC hereunder, rights or securities of or interests in the converting other entity may be exchanged for or converted into cash, property or rights or securities of or interests in the domestic LLC or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property or rights or securities of or interests in another domestic LLC or other entity, or may be cancelled.

(j) *Nonexclusivity.* This section is nonexclusive. Any other entity may be converted to a domestic LLC in any other manner provided by law.

#### 704. Conversion of LLC.

(a) *General.* Upon compliance with this section, a domestic LLC may convert to another entity by filing with the secretary of state:

(1) A certificate of conversion pursuant to subsection (f); and

(2) If the other entity into which the domestic LLC is to be converted is an entity formed under the laws of this state, the formational document, if any, required by other laws of this state to be filed with the secretary of state in connection with the formation of the other domestic entity, which formational document has been executed in accordance with the applicable law of this state with respect to such formational document.

(b) *Compliance with Other Applicable Law.* If the domestic LLC is to be converted into a foreign entity, the conversion must be permitted under the laws of the jurisdiction of the foreign entity, and the foreign entity must comply with such laws. If the domestic LLC is to be converted into a domestic entity (other than a domestic LLC), the conversion must be permitted under the other laws of this state that apply to the domestic entity, and the domestic entity must comply with such laws.

(c) *Approval.* The conversion of a domestic LLC to another entity must be approved by:

(1) A majority vote of the managers, if the LLC is a manager-managed LLC, or a majority vote of the directors, if the LLC is a director-managed LLC; and

(2) A majority vote of the members, whether the LLC is a member-managed LLC, a manager-managed LLC or a director-managed LLC.

(d) *Winding Up Not Required.* The conversion of a domestic LLC to another entity in accordance with this section shall not require the domestic LLC to wind up its affairs under § [610] or pay its liabilities and distribute its assets under § [620].

(e) *Exchange or Conversion of Interests.* In connection with the conversion of a domestic LLC to another entity in accordance with this section, rights or securities of or interests in the domestic LLC may be exchanged for or converted into cash, property, rights or securities of or interests in the other entity into which the domestic LLC is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another entity, or may be cancelled.

(f) *Contents of Certification of Conversion.* The certificate of conversion shall state the following:

(1) The name of the domestic LLC and, if it has been changed, the name under which its articles of organization were originally filed;

(2) The date of filing of the original articles of organization of the domestic LLC with the secretary of state;

(3) The name of the other entity into which the domestic LLC is to be converted and the jurisdiction and type of entity of the other entity;

(4) The future effective date or time of the conversion if it is not to be effective upon the filing of the certificate of conversion;

(5) That all required approvals of the conversion have been obtained by the domestic LLC; and

(6) If the domestic LLC is converted to a foreign entity, a statement that the foreign entity agrees that it may be served with process in this state in any proceeding for the enforcement of any obligation of the domestic LLC arising prior to the date of the conversion, irrevocably appointing the secretary of state as its agent to accept service of process in any such proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state. (In the event of service under this subsection upon the secretary of state, the procedures set forth in § [113] shall be applicable, except that the plaintiff in any such proceeding shall furnish the secretary of state with the address specified in the certificate of conversion provided for in this subsection and any other address that the plaintiff may elect to furnish, together with copies of the process as required by the secretary of state, and the secretary of state shall notify the converted entity at all the addresses furnished by the plaintiff in accordance with the procedures set forth in § [113].)

(g) *Result of Conversion.* The conversion of a domestic LLC to another entity in accordance with this section and the resulting cessation of its existence as a domestic LLC pursuant to a certificate of conversion shall not be deemed to affect any debts, liabilities and obligations of the domestic LLC incurred prior to the conversion or the personal liability of any person incurred prior to the conversion, nor shall it be deemed to affect the law applicable to the domestic LLC with respect to matters arising prior to the conversion.

(h) *Effects of Conversion.* When any conversion of a domestic LLC to another entity has become effective under this section, for all purposes of the laws of this state:

(1) The converted other entity shall be deemed to be the same entity as the domestic LLC;

(2) All of the rights, privileges and powers of the domestic LLC and all property (real, personal and mixed) of and all debts due to the domestic LLC, as well as all other things and causes of action belonging to the domestic LLC, shall be and remain vested in the converted other entity and shall be the property of the converted other entity;

(3) The title to any real property vested by deed or otherwise in the domestic LLC shall not revert or be in any way impaired by reason of this section;

(4) All rights of creditors and all liens upon any property of the domestic LLC shall be preserved unimpaired;

(5) All debts, liabilities and obligations of the domestic LLC shall remain attached to the converted other entity and may be enforced against it to the same extent as if said debts, liabilities and obligations had originally been incurred or contracted by it in its capacity as the converted other entity;

(6) Any proceeding pending against the domestic LLC may be continued against the converted other entity as if the conversion had not occurred; and

(7) The rights, privileges, powers and interests in property of the domestic LLC, as well as the debts, liabilities and obligations of the domestic LLC, shall not be deemed, as a consequence of the conversion, to have been transferred to the converted other entity for any purpose of the laws of this state.

(i) *Nonexclusivity.* This section is nonexclusive. Any domestic LLC may be converted to another entity in any other manner provided by law.

(a) *Approval of Transfer.* The sale, lease, transfer or other disposition by an LLC of all or substantially all of its property and assets not in the usual and regular course of business must be approved by:

(1) A majority vote of the managers, if the LLC is a manager-managed LLC, or a majority vote of the directors, if the LLC is a director-managed LLC; and

(2) A majority vote of the members, whether the LLC is a member-managed LLC, a manager-managed LLC or a director-managed LLC.

(b) *Liability of Transferee.* The transferee of assets under this section is liable for the debts, obligations and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor with respect to the transfer of assets or to the extent provided by this Act or other applicable law.

#### 706. Contractual Appraisal Rights.

The LLC documents or an agreement or plan of merger may provide that contractual appraisal rights with respect to a membership interest, financial rights or another interest in the LLC shall be available for any class or group of members or holders of financial rights in the LLC in connection with any amendment of the LLC documents, any merger in which the LLC is a constituent party to the merger, any conversion of the LLC to another entity, any sale, lease, transfer or other disposition by the LLC of all or substantially all of its property and assets not in the usual and regular course of business or any other action or event affecting the LLC.

### Chapter 8

#### DERIVATIVE PROCEEDINGS AND EQUITABLE REMEDIES

##### 801. Right to Bring Proceeding.

(a) *Manager-Managed or Director-Managed LLC.* A member or holder of financial rights of a director-managed LLC or of a manager-managed LLC may bring a proceeding in the right of an LLC to recover a judgment in its favor if:

(1) The member or holder of financial rights, as applicable, was a member or holder of financial rights of the LLC when the transaction complained of occurred; or

(2) The member or holder of financial rights, as applicable, became a member or holder of financial rights through transfer by operation of law from a person who was a member or holder of financial rights, as applicable, when the transaction complained of occurred.

(b) *Member-Managed LLC.* A member or holder of financial rights of a member-managed LLC may bring a proceeding in the right of an LLC to recover a judgment in its favor if members or other persons with authority to do so have refused to bring the proceeding or if an effort to cause those members or other persons to bring the proceeding is not likely to succeed.

##### 802. Complaint.

A complaint in a proceeding brought in the right of an LLC must allege with particularity the demand made, if any, to obtain action by the directors, managers, officers, members or other persons with the authority to act, as applicable, and either that the demand was refused or ignored or why the member or holder of financial rights, as applicable, did not make the demand.

##### 803. Discontinuance.

A proceeding commenced under this chapter may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the LLC or a class of members and/or holders of financial rights, the court shall direct that notice be given to the members and/or holders of financial rights affected. If notice is so directed to be given, the court may determine which one (1) or more parties to the proceeding shall bear the expense of giving the notice, in such proportions as the court finds to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the proceeding and recoverable in the same manner as other taxable costs.

##### 804. Award of Expenses.

(a) *Defendant's Expenses.* On termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses (including attorneys' fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(b) *Plaintiff's Expenses.* If a derivative proceeding is successful in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of any such proceeding, the court may award the plaintiff its reasonable expenses, including reasonable attorneys' fees. If anything is so received by the plaintiff, the court shall make such award of the plaintiff's expenses payable out of those proceeds and direct the plaintiff to remit to the LLC the remainder thereof, and if those proceeds are insufficient to reimburse the plaintiff's reasonable expenses, the court may direct that any such award of the plaintiff's expenses or portion thereof be paid by the LLC.

#### 805. Equitable Remedies.

If an LLC or any officer, manager, director or member, as applicable, of the LLC or other person with the authority to act for the LLC violates a provision of this Act, a court in this state may, in a proceeding brought by a member or holder of financial rights of the LLC, grant any equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the member or holder of financial rights, as applicable.

### Chapter 9

#### FOREIGN LIMITED LIABILITY COMPANIES

#### 901. Governing Law.

Subject to the Constitution of Tennessee:

(1) The laws of the jurisdiction under which a foreign LLC is formed govern its formation and internal affairs and the liability of its members and representatives, regardless of whether the foreign LLC procured or should have procured a certificate of authority under this chapter; and

(2) Except as provided in § [1123], a foreign LLC may not be denied a certificate of authority to transact business in this state by reason of any difference between the laws of the jurisdiction of its formation and the laws of this state.

#### 902. Transactions Not Constituting Transacting Business.

(a) *General.* The following activities of a foreign LLC, among others, do not constitute transacting business within the meaning of this chapter:

(1) Maintaining, defending or settling any proceeding, claim or dispute;

(2) Holding meetings of its members or representatives or carrying on any other activities concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange and registration of the foreign LLC's own securities or appointing and maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through representatives or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, deeds of trust, mortgages and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages, deeds of trust and security interests in property securing the debts;

(9) Owning, without more, real or personal property; provided, that for a reasonable time the management and rental of real property acquired in connection with enforcing a mortgage or deed of trust shall also not be considered transacting business if the owner is attempting to liquidate the investment and if no office or other agency therefor, other than an independent agency, is maintained in this state;

(10) Conducting an isolated transaction that is completed within one (1) month and that is not one in the course of repeated transactions of a like nature; or

(11) Transacting business in interstate commerce.

(b) *Entity Not Transacting Business.* An entity formed under the laws of any jurisdiction other than this state shall not be deemed to be transacting business in this state for purposes of obtaining a certificate of authority to transact business solely by reason of its being or acting in its capacity as a member or manager of a domestic or foreign LLC.

(c) *Nonexhaustive Enumeration.* The enumeration of activities in subsections (a) and (b) is not exhaustive, and is applicable solely to determine whether a foreign LLC must procure a certificate of authority and for no other purpose. This section does not apply in determining the contacts or activities that may subject a foreign LLC or its members to service of process or taxation in this state or to regulation under any other law of this state.

903. Name.

(a) *Foreign LLC Name.* A foreign LLC's name, to the extent used in this state, must meet the requirements of § [106].

(b) *Indistinguishable Name.* A foreign LLC may apply to the secretary of state under § [106] to utilize an indistinguishable name.

(c) *Assumed Name.* A foreign LLC may elect to adopt an assumed name under § [106] and to renew the assumed name.

(d) *Change or Cancellation of Assumed Name.* A foreign LLC may, pursuant to § [106], change or cancel an assumed name.

(e) *Reserved Name.* A foreign LLC may, pursuant to § [107], reserve a name, renew a reserved name and transfer or cancel a reserved name.

(f) *Registered Name.* A foreign LLC may obtain and retain a registered name by complying with § [108].

904. Application for Certificate of Authority.

(a) *Application Requirements.* Before transacting business in this state, a foreign LLC shall obtain a certificate of authority. A foreign LLC may obtain a certificate of authority by complying with this section and filing with the secretary of state for a certificate of authority setting forth the following:

(1) The name of the foreign LLC;

(2) The name of the jurisdiction under the laws of which it is formed and the date of its formation;

(3) The street address, including the zip code, of its registered office in this state and the name of its registered agent at that office;

(4) The street address, including the zip code, of the principal executive office of the foreign LLC;

(5) If the provisions of § [309(i)] are applicable to the foreign LLC, the information required under § [309(i)]; and

(6) If the foreign LLC has more than six (6) members at the date of the filing of the application for the certificate of authority, the number of members of the LLC at the date of filing the application for the certificate of authority.

(b) *Submission of Application.* The foreign LLC shall deliver with the completed application a certificate of existence (or document of similar import) duly authenticated by the secretary of state or other official having custody of limited liability company records in the jurisdiction of its formation. The certificate shall not bear a date of more than two (2) months prior to the date the application for the certificate of authority is filed in this state.

905. Certificate of Authority.

(a) *Filing of Application.* If a document filed with the secretary of state conforms to the requirements of § [904(a)], the secretary of state shall:

(1) Endorse on the application the word "Filed" and the date and time of the filing of it;

(2) File the original of the application; and

(3) Return the original of the application, together with the filing fee receipt, to the person who filed it, and such document shall constitute a certificate of authority issued by the secretary of state.

(b) *Effectiveness of Application.* The certificate of authority is effective from the date the application is filed with the secretary of state, as evidenced by the secretary of state's date and time endorsement on the original document.

#### 906. Amendments to the Certificate of Authority.

If any statement in the application for a certificate of authority by a foreign LLC was false when made or any matter described in the application has changed, making the application inaccurate in any respect, the foreign LLC shall promptly file with the secretary of state an application for amendment to the certificate of authority correcting the statement; provided, that changes in the registered office or registered agent shall be made in accordance with § [110]. The application for amendment to the certificate of authority shall be processed in the same manner as provided in § [905] for a certificate of authority.

#### 907. Cancellation of Certificate of Authority.

(a) *Certificate of Cancellation.* A foreign LLC may cancel its certificate of authority by filing with the secretary of state a certificate of cancellation of certificate of authority setting forth the following:

(1) The current name of the foreign LLC and, if different, the name under which it transacts business in this state;

(2) The name of the jurisdiction under the laws of which it is formed;

(3) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(4) That it either continues its registered agent in this state or revokes the authority of the registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(5) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (a)(4); and

(6) A commitment to notify the secretary of state in the future of any change in the mailing address set forth under subsection (a)(5).

(b) *Service After Cancellation.* After cancellation of the certificate of authority of the foreign LLC, service of process on the secretary of state or the continued registered agent under this section is service on the foreign LLC. Upon receipt of process, the secretary of state shall comply with the provisions of § [113]; provided, however, that the mailing address set forth under subsection (a)(5), as it may be changed under subsection (a)(6), shall be deemed to be the principal executive office of the foreign LLC for purposes of the compliance with the provisions of § [113] by the secretary of state.

#### 908. Revocation of Certificate of Authority.

The secretary of state may commence a proceeding under § [909] to administratively revoke the certificate of authority of a foreign LLC authorized to transact business in this state if:

(1) The foreign LLC does not deliver its annual report to the secretary of state within two (2) months after it is due;

(2) The foreign LLC is without a registered agent or registered office in this state for two (2) months or more;

(3) The foreign LLC does not inform the secretary of state under § [110] or § [111] that its registered agent or registered office has changed, that its registered agent has resigned or that its registered office has been discontinued within two (2) months of the change, resignation or discontinuance;

(4) The name of the foreign LLC contained in a document filed pursuant to this Act fails to comply with the provisions of § [903];

(5) A member or representative of the foreign LLC signed a document such person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing;

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of the foreign LLC's records in the jurisdiction under the laws of which the foreign LLC is formed, stating that it has been terminated or has been a constituent party to a merger and was not the surviving entity of the merger;

(7) The foreign LLC is exceeding the authority conferred upon it by this chapter;  
or

(8) The foreign LLC submits to the secretary of state a check, bank draft, money order or other such instrument for payment of any fee, and it is dishonored upon presentation for payment.

909. Procedure for and Effect of Administrative Revocation.

(a) *Notice of Revocation.* If the secretary of state determines that one (1) or more grounds exist under § [908] for revocation of a certificate of authority, the secretary of state shall serve the foreign LLC with written communication of the secretary of state's determination, except that the determination may be sent by first class mail. If the grounds for revocation are pursuant to § [908(5)], notice need not be sent, and a certificate of revocation may be sent without the two (2) month waiting period required by subsection (b).

(b) *Certificate of Revocation.* If the foreign LLC does not correct each ground for administrative revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after service of the communication of the determination, the secretary of state may revoke the foreign LLC's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign LLC, except that the copy of the certificate may be sent by first class mail.

(c) *Effective Date of Administrative Revocation.* The authority of a foreign LLC to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) *Service of Process on Secretary of State.* The secretary of state's revocation of a foreign LLC's certificate of authority appoints the secretary of state as the foreign LLC's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign LLC was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign LLC. Upon receipt of process, the secretary of state shall comply with the provisions of § [113].

(e) *Effect on Registered Agent and Registered Office.* The administrative revocation of a foreign LLC's certificate of authority does not terminate the designation or authority of the registered agent or registered office of the LLC.

910. Reinstatement Following Administrative Revocation.

(a) *Application for Reinstatement.* A foreign LLC whose certificate of authority is administratively revoked under § [909] may apply to the secretary of state for reinstatement. The application must:

(1) State the name of the foreign LLC at its date of administrative revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State a name for the foreign LLC that satisfies the requirements of § [903].

(b) *Certificate of Reinstatement.*

(1) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall reinstate the certificate of authority, prepare a certificate that recites the secretary of state's determination and the effective date of reinstatement, file the original of

the certificate and serve a copy on the foreign LLC, except that the copy of the certificate may be sent by first class mail; and

(2) If the foreign LLC name in subsection (a)(3) is different than the foreign LLC name in subsection (a)(1), the application for reinstatement shall constitute an amendment to the foreign LLC's certificate of authority insofar as it pertains to the foreign LLC's name.

(c) *Relation Back of Reinstatement.* When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation, and the foreign LLC resumes carrying on its business as if the administrative revocation had never occurred.

911. Appeal From Denial of Foreign LLC's Reinstatement.

(a) *Notice of Denial.* If the secretary of state denies a foreign LLC's application for reinstatement following administrative revocation, the secretary of state shall serve the foreign LLC with a writing that explains the reason or reasons for denial.

(b) *Appeal of Denial.* The foreign LLC may appeal the denial of reinstatement to the chancery court of Davidson County within thirty (30) days after service of the writing by petitioning the court to set aside the revocation and attaching to the petition copies of the secretary of state's certificate of revocation, the foreign LLC's application for reinstatement and the secretary of state's writing explaining the reason or reasons for denial.

(c) *Order of Reinstatement.* The court may summarily order the secretary of state to reinstate the certificate of authority of the foreign LLC or may take other action the court considers appropriate.

(d) *Appeal of Court Decision.* The court's final decision may be appealed as in other civil proceedings.

912. Cancellation of Certificate of Authority Following Administrative Revocation.

(a) *Certificate of Cancellation.* When a foreign LLC that has had its certificate of authority revoked desires to withdraw from this state, it may do so without first being reinstated by filing with the secretary of state a certificate of cancellation of certificate of authority following administrative revocation of the certificate of authority. The certificate shall set forth:

(1) The current name of the foreign LLC and, if different, the name under which it transacts business in this state, the date of revocation, of its certificate of authority and the name of the jurisdiction under the laws of which it is formed;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it either continues its registered agent in this state or revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (a)(3); and

(5) A commitment to notify the secretary of state in the future of any change in the mailing address set forth under subsection (a)(4).

(b) *Service of Process After Cancellation.* After cancellation of the certificate of authority of the foreign LLC, service of process on the secretary of state or the continued registered agent under this section is service on the foreign LLC. Upon receipt of process, the secretary of state shall comply with the provisions of § [113]; provided, however, that the mailing address set forth under subsection (a)(4), as it may be changed under subsection (a)(5), shall be deemed to be the principal executive office of the foreign LLC for purposes of the compliance with the provisions of § [113] by the secretary of state.

913. Transaction of Business Without Certificate of Authority.

(a) *Access to Courts.* A foreign LLC transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.



(b) *Successors and Transferees.* The successor to a foreign LLC that transacted business in this state without a certificate of authority and the transferee of a cause of action arising out of that business may not maintain a proceeding on behalf of its predecessor or transferor based on a cause of action of its predecessor or transferor in any court in this state until the foreign LLC or its successor obtains a certificate of authority.

(c) *Stay of Proceedings.* A court may stay a proceeding commenced by a foreign LLC, its successor or transferee, until it determines whether the foreign LLC or its successor is required to obtain a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign LLC or its successor obtains the certificate of authority.

(d) *Fine.* A foreign LLC transacting business in this state without first having obtained a certificate of authority shall be fined and shall pay to the secretary of state three (3) times the otherwise required filing fee for each year or part thereof during which the foreign LLC failed to have such certificate of authority.

(e) *Payment of Fines Before Filing of Application.* An application for a certificate of authority by a foreign LLC that has transacted business in this state without a certificate of authority shall not be filed with the secretary of state until all amounts due under subsection (d) have been paid.

(f) *Nonimpairment.* Notwithstanding subsections (a) and (b), the failure of a foreign LLC to obtain a certificate of authority does not impair:

- (1) The validity of any contract or act of the foreign LLC;
- (2) The right of any other party to the contract to maintain any proceeding on the contract; or
- (3) The foreign LLC from defending any proceeding in any court of this state.

(g) *Liability for Debts.* A member or representative of a foreign LLC is not liable for the debts and obligations of the foreign LLC solely by reason of the foreign LLC's having transacted business in this state without a valid certificate of authority.

#### 914. Enjoined From Doing Business.

The attorney general and reporter shall, upon the attorney general and reporter's own motion or upon the relation of proper parties, proceed by complaint in the chancery court of Davidson County or in the chancery court of any county in which a foreign LLC is transacting or has transacted business to enjoin the foreign LLC or any representative thereof from transacting any business in this state if the foreign LLC has failed to obtain or maintain a certificate of authority or if the foreign LLC has secured a certificate of authority from the secretary of state under § [904] on the basis of false or misleading representations. The reasonable attorney fees and expenses of such proceeding by the attorney general and reporter may be recovered from the foreign LLC at the discretion of the court if an injunction is obtained.

### Chapter 10

#### MISCELLANEOUS

#### 1001. Reservation of Power to Amend or Repeal.

The general assembly has the power to amend or repeal all or part of this Act at any time, and all domestic and foreign LLCs subject to this Act shall be governed by the amendment or repeal.

#### 1002. Applicability; Savings Clause.

(a) *Effective Date; Savings Clause.* The provisions of this Act apply to (i) every domestic LLC formed on or after January 1, 2006, (ii) any domestic LLC that was formed prior to January 1, 2006, and that has elected to be governed by this Act pursuant to subsection (b) and (iii) the outstanding and future interests in the respective domestic LLCs described in clauses (i) and (ii) of this subsection; provided, however, that if there are other specific statutory provisions that govern the formation of, impose restrictions or requirements on, confer special powers, privileges or authorities on or fix special procedures or methods for special categories of LLCs, then to the extent such provisions are inconsistent with or different from this Act, such provisions shall prevail.

(b) *Voluntary Election by Pre-2006 LLCs.* On or after January 1, 2006, a domestic LLC formed prior to January 1, 2006, under the Prior Act may voluntarily elect to be governed by this Act by amending its articles of organization to include the statement "This LLC elects to be governed by the Tennessee Revised Limited Liability Company Act" or a statement of like import. Such election

and amendment to the articles of organization must be approved by consent of all the members of the domestic LLC.

(c) *Prior Act Governance of Pre-2006 LLCs.* Any domestic LLC that was formed prior to January 1, 2006, under the Prior Act and that does not voluntarily elect to be governed by this Act pursuant to subsection (b) shall continue to be governed by the Prior Act.

(d) *Foreign LLCs.* The provisions of this Act apply to every foreign LLC that first files an application for a certificate of authority on or after January 1, 2006. With respect to each foreign LLC that first filed an application for a certificate of authority prior to January 1, 2006, the Prior Act shall apply to such foreign LLC until the due date of the first annual report required to be filed by such foreign LLC on or after January 1, 2006, after which due date this Act shall apply to such foreign LLC, except that such foreign LLC shall not be required to obtain a new certificate of authority.

(e) *Pre-2006 Proceeding Preserved.* This Act does not affect an action or proceeding commenced or right accrued under the Prior Act.

#### 1003. LLC Tax Classification.

For purposes of all state and local Tennessee taxes, a domestic or foreign LLC shall be treated as a partnership or an association taxable as a corporation as such classification is determined for federal income tax purposes. The members and any other equity owners of a foreign LLC treated as a partnership are subject to all state and local Tennessee taxes in the same manner and extent as partners in a foreign partnership. The members and holders of financial rights of a domestic LLC are subject to all state and local Tennessee taxes in the same manner and extent as partners in a domestic partnership.

#### 1004. Governing Law.

(a) *Liability of Members and Others.* The liability of a member, holder of financial rights, director, manager, officer, employee, or agent of an LLC formed and existing under this Act shall at all times be governed by this Act and the laws of this state.

(b) *Conflict with Other Law.* If a conflict arises between the laws of this state and the laws of any other jurisdiction with regard to the liability of a member, holder of financial rights, director, manager, officer, employee or agent of an LLC for the debts, obligations and liabilities of the LLC or for the acts or omissions of another member, holder of financial rights, director, manager, officer, employee or agent of the LLC, this Act and the laws of this state shall govern in determining such liability.

#### 1005. Filing Requirements.

(a) *Eligibility for Filing.* A document must satisfy the requirements of this section and of any other section of this Act that adds to or varies these requirements in order to be entitled to filing with the secretary of state.

(b) *Permitted or Required by Act.* This Act must require or permit filing the document with the secretary of state.

(c) *Required and Permissive Information.* The document must contain the information required by this Act. It may contain other information as well.

(d) *Format.* The document must be typewritten or printed in ink in a clear and legible fashion on one (1) side of letter or legal size paper.

(e) *English Language.* The document must be in the English language. An LLC's or other entity's name need not be in English if it is written in English letters or Arabic or Roman numerals, and the certificate of existence or equivalent document of a foreign entity need not be in English if it is accompanied by a reasonably authenticated English translation.

(f) *Execution.* The document must be executed by, or by an authorized representative of, the person submitting the document for filing.

(g) *Form of Execution.* The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs if other than the person's individual capacity. The document may but need not contain:

- (1) An attestation by the secretary or an assistant secretary of a corporation;
- (2) An acknowledgment, verification or proof; or

(3) The date the document is signed, except that such date shall be required for the annual report for the secretary of state.

(h) *Mandatory Form.* If the secretary of state pursuant to statutory authority has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(i) *Delivery to Secretary of State.* The document must be delivered to the secretary of state for filing and must be accompanied by the current filing fee and any tax, license fee, interest or penalty required by this Act.

(j) *Required Statement.* The document must contain a statement that makes it clear that the document is being filed pursuant to this Act.

(k) *Power to Promulgate Rules.* The secretary of state has the power to promulgate appropriate rules and regulations establishing acceptable methods for execution of any document to be filed with the secretary of state.

(l) *Verification by Commissioner of Revenue.* Notwithstanding any other provision of the law to the contrary, whenever this Act requires that an application or other document submitted to the secretary of state for filing be accompanied by a certificate from the commissioner of revenue reciting that the entity has properly filed all reports and paid all required taxes and penalties, the certificate requirement shall be met, and a paper certificate need not accompany the application or other document, if the commissioner provides to the secretary of state electronic verification of the required information. Upon request of the person seeking certificate information, the commissioner shall provide to the secretary of state electronic verification in lieu of a paper certificate.

(m) *Prior Law.* Any LLC that has not timely filed with the department of revenue such information as has been required by the commissioner of revenue under prior law (Acts 1997, ch. 421, § 1) shall be subject to administrative dissolution in accordance with the procedures specified in § [605]. The certificate of authority of any foreign LLC that has not timely filed such information with the department shall be subject to revocation as provided in § [909]. Upon certification by the commissioner of revenue that a domestic LLC or foreign LLC has complied with the information reporting requirements that were required under prior law, the domestic LLC or foreign LLC that has been administratively dissolved or that has had its certificate of authority revoked for failure to timely file such information may be reinstated.

#### 1006. Forms.

(a) *Annual Report.* The secretary of state may prescribe a form for the annual report. If the secretary of state prescribes a form for the annual report, the use of the prescribed form for the annual report shall be mandatory, and the secretary of state shall furnish on request the prescribed form for the annual report.

(b) *Other Forms.* The secretary of state may prescribe forms for other documents that are required or permitted by this Act to be filed with the secretary of state. If the secretary of state prescribes forms for other documents that are required or permitted by this Act to be filed with the secretary of state, the secretary of state shall furnish on request the prescribed forms for the other documents; however, the use of the prescribed forms for the other documents shall not be mandatory.

#### 1007. Filing, Service and Copying Fees.

(a) *Filing Fees.* When the documents described in this Act are filed with the secretary of state, the secretary of state shall collect the respective fees for such documents as are specified in this subsection. For purposes of this Act, no document is considered to be filed with the secretary of state unless such document is accompanied by the fee specified for such document in this subsection.

##### Document Fee

- (1) Articles organization As provided in subsection (d)
- (2) Certificate of formation \$20.00
- (3) Certificate of conversion \$20.00
- (4) Application for reserved name \$20.00
- (5) Application for use of indistinguishable name \$20.00

- (6) Notice of transfer or cancellation of reserved name \$20.00
- (7) Application for or renewal of registered name \$20.00
- ( 8) Application for or change, cancellation, or renewal of assumed name \$20.00
- (9) Statement of change of registered agent, registered office, or both by domestic or foreign LLC  
\$20.00
- (10) Statement of change of registered office by registered agent \$5.00 per domestic or foreign LLC, but  
not less than \$20.00
- (11) Registered agent's statement of resignation \$20.00
- (12) Articles of amendment \$20.00
- (13) Restated or amended and restated articles of organization \$20.00
- (14) Articles of correction \$20.00
- (15) Certificate of merger \$100.00
- (16) Statement of abandonment of merger \$20.00
- (17) Articles of termination by organizers \$20.00
- (18) Notice of dissolution \$20.00

Document Fee

- (19) Articles of revocation of dissolution \$20.00
- (20) Articles of termination \$20.00
- (21) Certificate of administrative dissolution No fee
- (22) Application for reinstatement following administrative dissolution \$70.00
- (23) Articles of termination following administrative dissolution \$100.00
- (24) Certificate of reinstatement No fee
- (25) Decree of judicial dissolution No fee
- (26) Application for certificate of authority- As provided in subsection (d)
- (27) Application for amendment to certificate of authority \$20.00
- (28) Certificate of cancellation of certificate of authority \$20.00
- (29) Certificate of administrative revocation of certificate of authority No fee
- (30) Certificate of cancellation of certificate of authority following administrative revocation \$100.00
- (31) Application for reinstatement following administrative revocation \$70.00
- (32) Annual report As provided in subsection (d)
- (33) Any other document required or permitted by this Act to be filed with the secretary of state \$20.00

(b) *Fee for Service of Process.* The secretary of state shall collect a fee of twenty dollars (\$20.00) each time process is served on the secretary of state under this Act. The party to a

proceeding causing service of process is entitled to recover this fee as costs if it prevails in the proceeding.

(c) *Fee for Copying.* The secretary of state shall collect a fee of twenty dollars (\$20.00) for copying all filed documents relating to a domestic or foreign LLC. All such copies will be certified or validated by the secretary of state.

(d) *Initial and Annual Fee.* The secretary of state shall collect from each domestic LLC and each foreign LLC that is applying for a certificate of authority or is authorized to transact business in this state, as applicable, an initial filing fee in an amount equal to fifty dollars (\$50.00) multiplied by the number of members of the domestic or foreign LLC, as specified in the articles of organization or application for certificate of authority, as applicable, and each year thereafter an annual filing fee in an amount equal to fifty dollars (\$50.00) multiplied by the number of members of the domestic or foreign LLC, as specified in the annual report; provided, however, that the amount of each initial filing fee and annual filing fee required under this subsection shall be no less than three hundred dollars (\$300) and no more than three thousand dollars (\$3,000). Notwithstanding the provisions of this subsection (d), if the LLC is prohibited by its articles from transacting business in this state, the amount of the initial filing fee or the annual filing fee, as applicable, required under this subsection shall be three hundred dollars (\$300) regardless of the number of members of the LLC, as specified in the articles of organization or the annual report. Provided, further, the secretary of state shall collect from each domestic and foreign LLC an additional filing fee of \$20.00 for any annual report that sets forth any change of the registered office or registered agent of the domestic or foreign LLC.

(e) *Filing with Register of Deeds.* In addition to the other filing requirements of this Act, a copy of all documents specified in subsections (a) (1), (12), (13), (14), (15), (16), (17), (18) and (19) shall also be filed in the office of the register of deeds in the county wherein an LLC has its principal executive office, if such principal executive office is in this state, and in the case of a merger, in the county in which the surviving LLC or other entity shall have its principal executive office, if such principal executive office is in this state. The register of deeds may charge five dollars (\$5.00) plus fifty cents (50¢) per page for each page in excess of five (5) pages for such filing. The foregoing notwithstanding, the failure to file a copy of a document in the office of the register of deeds under this subsection shall not affect the validity or effectiveness of the document.

#### 1008. Correcting Filed Document.

(a) *When Permitted.* A domestic or foreign LLC or other person required or permitted by this Act to file a document may correct a document filed with the secretary of state if the document:

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, certified, or acknowledged.

(b) *Articles of Correction.* A document is corrected:

(1) By preparing articles of correction that:

(A) Describe the document (including its filing date) or have attached thereto a copy of the document;

(B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution, attestation, seal, certification or acknowledgment was defective; and

(C) Correct the incorrect statement or defective execution, attestation, seal, certification or acknowledgment; and

(2) By filing the articles of correction with the secretary of state.

(c) *When Effective.* Articles of correction are effective on the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

#### 1009. Filing Duty of Secretary of State.

(a) *Requirement to Complete Filing.* If a document that is delivered to the office of the secretary of state for filing satisfies the requirements of § [1005] and is accompanied by the required filing fee for the document under § [1007], the secretary of state shall complete the filing of the document as provided in this section.

(b) *Procedure.* The secretary of state completes the filing of a document by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date and time of receipt, on the document. After completing the filing of a document, except for filings pursuant to § [111] and § [1017], the secretary of state shall deliver in due course the document, with the filing fee receipt (or acknowledgment of receipt if no fee is required) attached, to the domestic or foreign LLC, other person required or permitted by this Act to file the document or representative of such domestic or foreign LLC or other person that delivered the document for filing. A domestic or foreign LLC, other person or representative of such domestic or foreign LLC or other person may deliver to the office of the secretary of state an exact or conformed copy of the document delivered for filing together with such document, and, in that event, the secretary of state shall stamp or otherwise endorse the exact or conformed copy "Filed," together with the secretary of state's name and official title and the date and time of receipt, and immediately return the exact or conformed copy to the person filing the original of such document.

(c) *Refusal to File.* If the secretary of state refuses to complete the filing of a document, the secretary of state shall return it to the domestic or foreign LLC, other person or representative of such domestic or foreign LLC or other person that delivered the document for filing immediately after the document was received for filing, together with a brief, written explanation of the reason for such refusal.

(d) *Effect of Filing or Refusal to File.* The secretary of state's duty to complete the filing of documents under this section is ministerial. The secretary of state's completing the filing or refusing to complete the filing of a document does not:

- (1) Affect the validity or invalidity of the document in whole or in part;
- (2) Relate to the correctness or incorrectness of information contained in the document;
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect; or
- (4) Establish that a document purporting to be an exact or conformed copy is in fact an exact or conformed copy.

(e) *Conflict with Other Law.* Any document that meets the requirements of this Act for filing and recording shall be received, filed and/or recorded by the appropriate office upon payment of the appropriate fee and taxes, if any, notwithstanding any contrary requirements found in any other provision of the laws of this state.

#### 1010. Appeal From Secretary of State's Refusal to Complete the Filing of a Document.

(a) *Appeal.* If the secretary of state refuses to complete the filing of a document delivered to the office of the secretary of state for filing, the domestic or foreign LLC or other person that delivered the document for filing may appeal the refusal to the chancery court of Davidson County. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of the reason for the refusal to complete the filing of the document.

(b) *Court-ordered Filing.* The court may summarily order the secretary of state to file the document or may take other action the court considers appropriate.

(c) *Appeal of Court Decision.* The court's final decision may be appealed as in other civil proceedings.

(d) *Standard of Review.* Any judicial review of the secretary of state's refusal to complete the filing of a document shall be conducted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

#### 1011. Evidentiary Effect of Copy of Filed Document.

A certificate attached or certification affixed to a copy of a document filed with the secretary of state, bearing the secretary of state's signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

#### Penalty for Signing False Document.

(a) *Fine.* A person commits a Class B misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500), if the person signs a document, knowing it to be false in any material

respect, with intent that the document be delivered to the office of the secretary of state or other required office for filing.

(b) *Nonexclusivity.* The offense created by this section is in addition to any other offense created by law for the same conduct.

#### Effective Time and Date of Document.

(a) *General.* Except as provided in subsection (b) and § [201], § [702], § [703], § [704], § [1008(c)] and § [108 of the Tennessee Revised Nonprofit Limited Liability Company Act], a document accepted for filing is effective:

(1) At the time of filing on the date it is filed with the secretary of state, as evidenced by the office of the secretary of state's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed with the secretary of state.

(b) *Delayed Effectiveness.* A document may specify a delayed effective time or date. If a document specifies a delayed effective time and date, the document becomes effective at the time and date specified. If a document specifies a delayed effective date but does not specify a delayed effective time, the document is effective at the close of business on the date specified. A delayed effective date for a document may not be later than the ninetieth (90th) day after the date it is filed with the secretary of state, except in the case of a certificate of merger filed under § [702] or a certificate of conversion and the accompanying articles of organization or other formational document, as applicable, filed under § [703], § [704] or § [108 of the Tennessee Revised Nonprofit Limited Liability Company Act]. Notwithstanding the foregoing, documents specified in § [1007] (a) (2), (4), (6), (7), (8), (14), (19), (20), (24), (30) and (32) may not specify a delayed effective time or date.

(c) *Requirement for Registered Agent and Office.* The secretary of state shall not complete the filing of any articles of organization of a domestic LLC or application for a certificate of authority of a foreign LLC unless that document designates the registered agent and registered office of such domestic or foreign LLC in accordance with § [109]. The secretary of state shall not complete the filing of any other document delivered by a domestic or foreign LLC for filing under this Act if the domestic or foreign LLC does not have a registered agent and registered office designated at the time the document is delivered for filing, unless at the time the document is received for filing the secretary of state also receives for filing a statement designating such registered agent or registered office or both, as applicable.

#### Penalty for Transacting Business in Tennessee in Violation of Articles.

In the event that an LLC is prohibited from transacting business in this state by its articles but actually transacts business in this state and but for § [1007(d)] it would have paid a larger initial or annual filing fee under § [1007(d)], the LLC shall be fined an amount equal to three (3) times the initial or annual filing fee, less the amount actually paid, for each year or part thereof in which it actually transacts business in this state.

#### Powers.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this Act, including, without limitation, the power to promulgate necessary and appropriate rules and regulations consistent with this Act and the power to destroy any records in the secretary of state's office concerning a domestic or foreign LLC ten (10) years after such domestic or foreign LLC has terminated, withdrawn from this state or had its certificate of authority revoked.

#### Deputies of Secretary of State.

An act of a duly authorized deputy of the secretary of state in the secretary of state's behalf under this Act is the equivalent of the act of the secretary of state; provided, that the deputy signs the name of the secretary of state by such deputy as deputy.

#### Annual Report for Secretary of State.

(a) *Required Contents:* Each domestic LLC and each foreign LLC authorized to transact business in this state shall file with the secretary of state an annual report that sets forth the following:

(1) The name of the domestic or foreign LLC and the jurisdiction under the laws of which it is formed;

(2) The street address and zip code of its registered office and the name of its registered agent at that office in this state;

(3) The street address, including the zip code, of its principal executive office;

(4) If the domestic or foreign LLC is a director-managed LLC or a manager-managed LLC (or its equivalent), the names and business addresses, including the zip code, of its directors or managers (or their equivalent), as applicable;

(5) The names and business addresses, including the zip code, of its officers (or their equivalent), if any;

(6) The federal employer identification number (FEIN) of the domestic or foreign LLC, or if such number has not been obtained, a representation that it has been applied for; and

(7) If the domestic or foreign LLC will have more than six (6) members as of the date the annual report is executed on behalf of the domestic or foreign LLC, the number of members of the domestic or foreign LLC as of the date the annual report is executed on behalf of the domestic or foreign LLC.

(b) *Information To Be Current.* Information in the annual report shall be current as of the date the annual report is executed on behalf of the domestic or foreign LLC. An annual report of a domestic LLC that sets forth a change of the principal executive office of the domestic LLC shall be deemed to be an amendment to the articles of organization of the domestic LLC, and the domestic LLC shall not be required to take any further action to amend the articles of organization of the domestic LLC under § [204(a)] with respect to such amendment. An annual report of a foreign LLC that sets forth a change of the principal executive office of the foreign LLC shall be deemed to be an amendment to the certificate of authority of the foreign LLC, and the foreign LLC shall not be required to take any further action to amend the certificate of authority of the foreign LLC under § [906] with respect to such amendment. An annual report of a domestic or foreign LLC that sets forth a change of the registered office or registered agent of the domestic or foreign LLC shall be deemed to be a statement of change for purposes of § [110(a)], and the domestic or foreign LLC shall not be required to take any further action under § [110(a)] with respect to such change.

(c) *Filing Date.* Each domestic LLC and each foreign LLC authorized to transact business in this state shall file the annual report with the secretary of state on or before the first (1st) day of the fourth (4th) month following the end of the close of the domestic or foreign LLC's fiscal year.

Construction.

(a) *No Strict Construction.* The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(b) *Gender.* As used in this Act, words importing the masculine, feminine or neuter gender include the masculine, feminine and neuter gender except when the contrary intention is manifest.

## PROFESSIONAL LIMITED LIABILITY COMPANIES

1101. Applicability.

Chapters [1-10] of this Act apply to domestic and foreign PLLCs to the extent not inconsistent with the provisions of this chapter.

1102. Chapter Definitions.

As used in this chapter, the following terms shall have the respective meanings set forth in this section unless the context otherwise requires:

(1) "Disqualified person" means an individual or entity that for any reason is or becomes ineligible under this chapter to be a member of a PLLC or holder of financial rights of a PLLC.

(2) "Foreign professional LLC," "foreign PLLC" or a PLLC that is otherwise designated as "foreign" means a foreign LLC that is formed under a law other than the law of this state for the purpose of rendering professional services under a law other than the law of this state.

(3) "Law" includes rules promulgated in accordance with § [1109] and § [1129].

(4) "Licensing authority" means the officer, board, agency, court or other authority in this state empowered to license or otherwise authorize the rendition of a professional service.



(5) "Prior Act" means the Tennessee Limited Liability Company Act set forth at Chapters 201-248 of Title 48 of Tennessee Code Annotated.

(6) "Professional LLC," "PLLC," "domestic professional LLC," "domestic PLLC" or a professional LLC or PLLC that is otherwise designated as "domestic" means a professional LLC that is formed under this Act, an LLC for which professional LLC status has been elected under this chapter or, where expressly indicated, a professional LLC that is formed under the Prior Act or an LLC that is formed under the Prior Act for which professional LLC status has been elected under the Prior Act.

(7) "Professional service" means a service that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service.

(8) "Qualified person" means an individual, general partnership, limited liability partnership, professional corporation, professional association or domestic or foreign PLLC that is eligible under § [1109] to be a member of or holder of financial rights in a PLLC.

#### 1103. Formation and Election.

(a) *Formation.* One (1) or more persons may, acting as organizers, form a PLLC by filing with the secretary of state articles of organization that comply with the applicable provisions of this Act, including § [1108], and that also state that: (i) it is a PLLC, (ii) its purpose is to render specified professional services and (iii) the PLLC has one (1) or more qualified persons as members and no disqualified persons as members or holders.

(b) *Election.* An LLC may elect professional LLC status by amending its articles to comply with subsection (a).

#### 1104. Purposes.

(a) *Single Profession.* Except to the extent authorized by subsection (b) and § [1109], a PLLC may be formed and professional LLC status of an LLC may be elected solely for the purpose of rendering professional services, including services ancillary to them, and solely within a single profession.

(b) *Multiple Professions.* A PLLC may be formed and professional LLC status of an LLC may be elected for the purpose of rendering professional services within two (2) or more professions and for the purpose of engaging in any lawful business authorized by this Act only if the combination of professional purposes or of professional and business purposes is specifically authorized by the licensing law of this state applicable to each profession in the combination.

(c) *Other States.* Notwithstanding the provisions of subsections (a) and (b), if a PLLC is formed or professional LLC status of an LLC is elected to provide professional services in states other than this state, such PLLC may be formed or professional LLC status of such LLC may be elected for the purpose of rendering professional service(s) permitted by the licensing boards of the other states in which it will operate. Such PLLC or LLC for which professional LLC status has been elected shall, nevertheless, be required to file reports and other information as may be required by the applicable licensing authorities of this state to establish or confirm that such PLLC or LLC for which professional LLC status has been elected is not providing unauthorized professional services in this state.

#### 1105. Powers.

(a) *General Powers.* Except as provided in subsection (b) or otherwise limited by this chapter, a PLLC has the powers enumerated in § [104] of this Act.

(b) *Other Professional Entities.* A PLLC may be a promoter, general partner, member, holder of financial rights, associate or manager of a PLLC, professional corporation, partnership, joint venture, trust or other entity only if the other entity is engaged solely in rendering professional services or in carrying on business authorized by the PLLC's articles.

#### 1106. Rendering of Professional Services.

(a) *Licensed Individuals.* A domestic or foreign PLLC may render professional services in this state only through individuals licensed or otherwise authorized in this state to render the services.

(b) *Non-Applicability.* Subsection (a) does not:

(1) Require an individual employed by a PLLC to be licensed to perform services for the PLLC if a license is not otherwise required;

(2) Prohibit a licensed individual from rendering professional services in the individual's individual capacity, although the individual is a member, holder of financial rights, manager, director, officer, employee or agent of a domestic or foreign PLLC; or

(3) Prohibit an individual licensed in another state from rendering professional services for a domestic or foreign PLLC in this state, if not prohibited by the licensing authority.

1107. Professions and Other Business Allowed to be Rendered.

(a) *Limitation by Articles.* A PLLC may not render any professional service or engage in any business other than the professional service and business authorized by its articles.

(b) *Other Investments.* Subsection (a) does not prohibit a PLLC from investing its funds in real estate, mortgages, securities or any other type of investment.

1108. Name.

(a) *Name Requirements.* The name of a domestic PLLC and of a foreign PLLC that is applying for a certificate of authority or is authorized to transact business in this state, in addition to satisfying the requirements of sections § [106] and § [903] of this Act (except the requirement that the name include the words "limited liability company" or "LLC"):

(1) Must contain the words "professional limited company," "professional limited liability company," "professional LLC," "limited liability professional company" or the abbreviations "P.L.C.," "P.L.L.C." or "L.L.P.C." or such abbreviations without punctuation; provided, however, that in the case of a foreign PLLC, the name may contain, subject to subsection (a)(2), and in lieu of the foregoing, the designations allowed by the jurisdiction in which the foreign PLLC was formed;

(2) Must not contain the word "corporation" or "incorporated" or an abbreviation of either or both of these words; and

(3) May not contain language stating or implying that the domestic or foreign PLLC is formed or has elected professional LLC status for a purpose other than a purpose authorized by § [1104] and its articles.

(b) *Personal Name.* Sections [106] and [903] of this Act do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of a member or former member of the domestic or foreign PLLC or the name of an individual who was associated with a predecessor of the domestic or foreign PLLC.

1109. Eligible Members and Holders.

(a) *Members and Holders.* A PLLC may have both members and holders of financial rights and may issue both membership interests to members and financial rights to holders.

(b) *General Eligibility.* A PLLC may have persons who are not licensed to practice a profession described in the PLLC's articles in this state as members or holders of financial rights only if the licensing authority that licenses the professionals who are members or holders of such a PLLC specifically so authorizes. Otherwise a PLLC may have as members and holders of financial rights only the following:

(1) Individuals who are authorized by law in this or another state to render a professional service described in the PLLC's articles;

(2) General partnerships in which all the partners are qualified persons with respect to the PLLC and in which at least one (1) partner is authorized by law in this state to render a professional service described in the PLLC's articles;

(3) Professional corporations and professional associations, whether domestic or foreign, authorized by law in this state to render a professional service described in the PLLC's articles; and/or

(4) PLLCs, whether domestic or foreign, authorized by law in this state to render a professional service described in the PLLC's articles.

(c) *Licensing Authority Eligibility Rules.* If a licensing authority with jurisdiction over a profession considers it necessary to prevent violation of the ethical standards of the profession, the

licensing authority may by rule restrict or condition, or revoke in part, the authority of PLLCs subject to its jurisdiction to have the members or holders of financial rights described in subsection (b). A rule promulgated under this section does not, of itself, make a member or holder of financial rights of a PLLC at the time the rule becomes effective a disqualified person.

(d) *Void Interests.* Any membership interest, governance rights or financial rights purported to be held by a person in violation of this section or a rule promulgated under this section is void.

(e) *Specified Health Care Professionals.* Notwithstanding any other provision of this chapter, the following health care professionals shall have a right to be members and/or holders of financial rights of the same PLLC:

(1) Optometrists licensed under Title 63, Chapter 8, and ophthalmologists licensed under Title 63, Chapter 6 or 9;

(2) Podiatrists licensed under Title 63, Chapter 3, and physicians licensed under Title 63, Chapter 6 or 9, except radiologists, pathologists and anesthesiologists;

(3) Doctors of chiropractic licensed under Title 63, Chapter 4, and physicians licensed under Title 63, Chapter 6 or 9, except radiologists, pathologists and anesthesiologists; and

(4) Physician assistants licensed under Title 63, Chapter 19, Part 1, and physicians licensed under Title 63, Chapter 6 or 9, except radiologists, pathologists, and anesthesiologists.

The services rendered by these health care professionals are considered related and complementary to each other; provided, that nothing in this chapter shall be construed to alter the lawful scope of practice of a professional who is a member or holder of financial rights of a PLLC under this subsection (e); and further provided that nothing in this chapter shall be construed to allow any professional who is a member or holder of financial rights of a PLLC under this subsection (e) to conduct the professional's practice in a manner contrary to the standards of ethics applicable to the professional's profession. Such individual shall accurately state such individual's professional credentials on any advertisement to the public.

#### 1110. Transfers.

(a) *Qualified Persons Only.* Subject to § [507] and § [508], a member or holder of financial rights of a PLLC may transfer such member's or holder's membership interest, governance rights or financial rights, as applicable, in the PLLC only to qualified persons; provided, that nothing in this section shall be construed as prohibiting such a member or holder from transferring such member's or holder's financial rights to a financial institution as collateral for a loan.

(b) *Prohibited Transfers Void.* A transfer of a membership interest, governance rights or financial rights that is made in violation of subsection (a), except one made by operation of law or court judgment, is void.

#### 1111. Required Purchase of Membership Interest and Financial Rights.

(a) *Purchase Obligation.* A PLLC must purchase (or cause to be purchased by a qualified person) the membership interest of any member and the financial rights of any holder of financial rights, at a price that represents the fair value of the membership interest or financial rights as of the date of the occurrence of the event giving rise to the PLLC's purchase obligation under this subsection, from (i) the personal representative of the member or holder of financial rights, (ii) the member or holder of financial rights or (iii) the disqualified person to whom the membership interest or financial rights has or have been transferred, as applicable in accordance with the following provisions of this subsection, if:

(1) The member or holder of financial rights dies;

(2) The member or holder of financial rights becomes a disqualified person, except as provided in subsection (c);

(3) The membership interest of a member or the financial rights of a holder is or are transferred by operation of law or court judgment to a disqualified person, except as provided in subsection (c); or

(4) The member or holder of financial rights retires, withdraws from or terminates employment with the PLLC.

(b) *Purchase Terms.* If the amount of fair value and other terms of payment for the membership interest or financial rights are fixed or are to be determined by the LLC documents or a private agreement, the amount and terms so fixed or determined govern. If the amount of fair value and other terms of payment are not so fixed or determined by the LLC documents or a private agreement, the PLLC shall purchase the membership interest or financial rights in accordance with § [1112].

(c) *Limited Disqualification.* This section does not require the purchase of a membership interest or financial rights in the event a member or holder of financial rights becomes a disqualified person if the disqualification lasts no more than five (5) months from the date the disqualification occurs.

(d) *Other Benefits.* This section and § [1112] do not prevent or relieve a PLLC from paying to a former member or holder pension benefits or other deferred compensation for services rendered by the former member or holder if otherwise permitted by law.

(e) *Specific Enforcement.* Any governing terms contained in the LLC documents of a PLLC or a private agreement as to the amount of fair value and other terms of payment for a membership interest or financial rights are specifically enforceable.

#### 1112. Purchase Notice, Acceptance and Termination of Interest.

(a) *Purchase Notice.* If a membership interest or financial rights must be purchased under § [1111], the PLLC shall deliver a written notice to the person who is entitled to receive payment in respect of the membership interest or financial rights under § [1111(a)], offering to purchase the membership interest or financial rights at a price the PLLC believes to represent its fair value as of the date of the occurrence of the event giving rise to the PLLC's purchase obligation under § [1111(a)]. The notice must be accompanied by the PLLC's balance sheet for a fiscal year ending not more than sixteen (16) months before the effective date of the notice, the PLLC's income statement for that year, a statement of changes in equity of the PLLC for that year and the PLLC's latest available interim financial statements, if any.

(b) *Acceptance.* The person who is entitled to receive payment in respect of a membership interest or financial rights under § [1111(a)] has thirty (30) days after the effective date of the notice to accept the PLLC's offer or to demand that the PLLC commence a proceeding under § [1113] to determine the fair value of the membership interest or financial rights. If such person accepts the offer, the PLLC shall make payment for the membership interest or financial rights within sixty (60) days after the effective date of the notice (unless a later date is agreed on) upon the transfer of the membership interest or financial rights from such person to the PLLC.

(c) *Termination.* After the PLLC makes payment for the membership interest or financial rights, the person who was entitled to receive payment in respect of the membership interest or financial rights under § [1111(a)], as well as the member or holder of financial rights whose membership interest or financial rights have been purchased, if different from such person, has no further membership interest or financial rights in the PLLC.

#### 1113. Commencement of Fair Value Determination Proceeding.

(a) *Right to Commence Proceeding.* If the person who is entitled to receive payment in respect of a membership interest or financial rights under § [1111(a)] does not accept the PLLC's offer under § [1112(b)] within the thirty (30) days period therein specified, such person may, during the following thirty (30) days period, deliver a written notice to the PLLC demanding that the PLLC commence a proceeding to determine the fair value of the membership interest or financial rights. The PLLC may commence a proceeding to determine the fair value of the membership interest or financial rights at any time during the sixty (60) days following the effective date of the PLLC's notice under § [1112(a)]. If the PLLC does not do so, the person who is entitled to receive payment in respect of the membership interest or financial rights under § [1111(a)] may commence a proceeding against the PLLC to determine the fair value of the membership interest or financial rights.

(b) *Jurisdiction.* A proceeding brought to determine the fair value of a membership interest or financial rights under subsection (a) shall be brought in a court of record having equity jurisdiction in the county where the PLLC's principal executive office (or, if not in this state, its registered office) is located. The PLLC and the person who is entitled to receive payment in respect of the membership interest or financial rights under § [1111(a)] shall each be made a party to the proceeding. The PLLC at its expense shall notify in writing all of the other members and any other person the court directs of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(c) *Appraisers*. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the power described in the order appointing them or in any amendment to such order.

(d) *Right to Judgment*. The person who is entitled to receive payment in respect of a membership interest or financial rights under § [1111(a)] is entitled to judgment for the fair value of the membership interest or financial rights determined by the court as of the date of the occurrence of the event giving rise to the PLLC's purchase obligation under § [1111(a)], together with interest from that date at a rate determined by the court to be fair and equitable.

(e) *Installment Payments*. The court may order the judgment paid in such installments as may be determined by the court.

#### 1114. Assessment of Proceeding Costs.

(a) *Determination and Assessment*. In a fair value proceeding commenced under § [1113], the court shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court, and the court shall assess the costs against the PLLC. The foregoing notwithstanding, the court may assess those costs in an amount the court determines to be equitable against the person who is entitled to receive payment in respect of the membership interest or financial rights under § [1111(a)] if the court determines that such person acted arbitrarily, vexatiously or not in good faith in refusing to accept the PLLC's offer.

(b) *Other Fees and Expenses*. The court may also:

(1) Assess the fees and expenses of counsel and experts for the person who is entitled to receive payment in respect of the membership interest or financial rights under § [1111(a)] against the PLLC and in favor of such person if the court determines that the fair value of the membership interest or financial rights substantially exceeded the amount offered by the PLLC or that the PLLC did not make an offer; or

(2) Assess the fees and expenses of counsel and experts for the PLLC against the person who is entitled to receive payment in respect of the membership interest or financial rights under § [1111(a)] and in favor of the PLLC if the court finds that the fair value of the membership interest or financial rights did not substantially exceed the amount offered by the PLLC.

#### 1115. Termination of Membership Interest or Financial Rights of a Disqualified Person.

If the membership interest or financial rights of a member or holder of financial rights is not or are not purchased under § [1112] or § [1113] within ten (10) months after the death of the member or holder or within five (5) months after the occurrence of any other event giving rise to the PLLC's purchase obligation under § [1111(a)], the PLLC shall immediately terminate the membership interest or financial rights on the PLLC's books, and the person who is entitled to receive payment in respect of the membership interest or financial rights under § [1111(a)], as well as the member or holder of financial rights, if different from such person, has no further membership interest or financial rights in the PLLC other than such person's right to payment of the fair value of the membership interest or financial rights under § [1112] or § [1113].

#### 1116. Disqualification of Members and Other Persons.

If any member or holder of financial rights of a PLLC becomes disqualified to render those professional services for which the PLLC was formed or has elected professional LLC status within this state, such member or holder shall be deemed to have resigned and withdrawn from the PLLC and shall have no further interests as a member or holder in the PLLC other than the right to receive any distribution to which such member or holder may be entitled as a member or holder under the LLC documents or §§ [1111-1115], if applicable. If any member, manager, director, officer, agent or employee of a domestic or foreign PLLC who is rendering professional service to the public within this state becomes legally disqualified to render those professional services within this state, that member, manager, director, officer, agent or employee shall immediately sever all professional employment and professional relationships with and financial interests in that domestic or foreign PLLC. A domestic PLLC's failure to require compliance with this provision shall constitute a ground for the dissolution of the PLLC by the secretary of state, and a foreign PLLC's failure to require compliance with this provision shall constitute a ground for the revocation of the foreign PLLC's certificate of authority in this state by the secretary of state.

#### 1117. Directors, Managers and Officers.

If persons other than qualified persons are permitted by the licensing authority to serve as directors, managers or officers of a PLLC, not less than one half (1/2) of the directors, if any, all managers, if any, and all officers, if any, except the secretary, assistant secretary and treasurer, if any, of a PLLC shall be qualified persons with respect to the PLLC.

1118. Privilege.

A privilege applicable to communications between an individual rendering professional services and the person receiving the services recognized under the statutes or common law of this state is not affected by this chapter. The privilege applies to a domestic or foreign PLLC and to its members, holders of financial rights, directors, managers, officers and employees in all situations in which it applies to communications between an individual rendering professional services on behalf of the PLLC and the person receiving the services.

1119. Liability.

(a) *Individual Professional Liability.* Each individual who renders professional services as a member, holder of financial rights, director, manager, officer, employee or other agent of a domestic or foreign PLLC is liable for such person's own negligent or wrongful acts or omissions to the same extent as if the person rendered the services as a sole practitioner. A member, holder of financial rights, director, manager, officer, employee or other agent of a domestic or foreign PLLC is not liable, however, for the conduct of other members, holders of financial rights, directors, managers, officers, employees or agents of the PLLC unless such person is also at fault.

(b) *PLLC Professional Liability.* A domestic or foreign PLLC whose members, holders of financial rights, directors, managers, officers, employees or other agents perform professional services within the scope of their employment or of their apparent authority to act for the domestic or foreign PLLC is liable to the same extent as such members, holders of financial rights, directors, managers, officers, employees or other agents.

(c) *General Limited Liability.* Except as otherwise provided by this chapter, the personal liability of a member, holder of financial rights, director, manager, officer, employee or other agent of a domestic or foreign PLLC is no greater in any respect than the liability of a member, holder of financial rights, director, manager, officer, employee or other agent of an LLC formed under this Act.

1120. Mergers and Conversions.

(a) *Mergers and Conversions Permitted.* A PLLC may merge with or into or convert into any other entity permitted to render the professional services of the PLLC in this state in the same manner and to the same extent as LLCs under Chapter 7 of this Act, and any entity permitted to render professional services of a PLLC in this state may convert into a PLLC in the same manner and to the same extent as other entities under Chapter 7 of this Act.

(b) *Compliance.* If the surviving entity or entity resulting from the conversion is an LLC and is to render professional services in this state, it must comply with this chapter.

1121. Cessation of Professional Services.

If a domestic PLLC ceases to render professional services, it must amend or restate its articles to delete references to rendering professional services and to conform its name to the requirements of § [106] of this Act. After the amendment or restatement becomes effective, the domestic PLLC may continue in existence as an LLC under this Act, and it is no longer subject to this chapter. If a foreign PLLC that is authorized to transact business in this state ceases to render professional services in this state, it must amend its certificate of authority to delete references to rendering professional services and to conform its name to the requirements of § [903] of this Act. After the amendment becomes effective, the foreign PLLC may continue its authority to transact business in this state as a foreign LLC, and it is no longer subject to this chapter.

1122. Dissolution.

The attorney general and reporter may commence a proceeding under § [617] of this Act to dissolve a PLLC if:

(1) The secretary of state or a licensing authority with jurisdiction over a professional service described in the PLLC's articles serves written notice on the PLLC in accordance with § [112] that it has violated or is violating a provision of this chapter;

(2) The PLLC does not correct each alleged violation or demonstrate to the reasonable satisfaction of the secretary of state or licensing authority that such violation did not occur within sixty (60) days after service of the notice in accordance with § [112] of this Act; and

(3) The secretary of state or licensing authority certifies to the attorney general and reporter a description of the violation, that it properly notified the PLLC of the violation and that the PLLC did not correct such violation or demonstrate that it did not occur within sixty (60) days after service of the notice in accordance with § [112] of this Act.

1123. Foreign PLLCs.

(a) *Certificate of Authority Required.* Except as provided in subsection (c), a foreign PLLC may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(b) *Requirements.* A foreign PLLC may not obtain a certificate of authority unless:

(1) Its name satisfies the requirements of § [1108];

(2) It is formed for one (1) or more of the purposes referenced in and satisfies the requirements of § [1104]; and

(3) All of its members, holders of financial rights (or their equivalent), if any, directors (or their equivalent), if any, managers (or their equivalent), if any, and officers (or their equivalent), if any, are licensed in one (1) or more states to render a professional service described in its articles; provided, however, that if the licensing authority of this state permits persons other than qualified persons to serve as directors, managers or officers of a PLLC, not less than one half (1/2) of its directors (or their equivalent), if any, all of its managers (or their equivalent), if any, and all of its officers (or their equivalent), if any, except the secretary, assistant secretary and treasurer, if any, shall be qualified persons with respect to the foreign PLLC.

(c) *Exception.* A foreign PLLC is not required to obtain a certificate of authority in this state unless it maintains or intends to maintain an office in this state for conduct of business or professional practice.

1124. Application for a Certificate of Authority.

The application of a foreign PLLC for a certificate of authority in this state shall contain the information required in § [904] of this Act; state that it is a foreign PLLC; state that its purpose is to render specified professional services; and include a statement that the requirements of § [1123(b)(3)] are satisfied.

1125. Revocation.

The secretary of state may administratively revoke the certificate of authority of a foreign PLLC authorized to transact business in this state if a licensing authority with jurisdiction over a professional service described in the foreign PLLC's certificate of authority certifies to the secretary of state that the foreign PLLC has violated or is violating a provision of this chapter and describes the violation in the certification.

1126. Offense - Penalty.

(a) *False Document.* A person commits a Class B misdemeanor, punishable by a fine of not more than five hundred dollars (\$500), if such person signs a document such person knows is false in any material respect with intent that the document be delivered to the licensing authority for filing.

(b) *Other Offenses.* The offense created by this section is in addition to any other offense created by law for the same conduct.

1127. Delivery of Articles or Certificate of Authority to Licensing Authority.

A domestic PLLC may not render professional services in this state until it delivers a certified copy of its articles to each licensing authority with jurisdiction over a professional service described in the articles, and a foreign PLLC may not render professional services in this state until it delivers a certified copy of its certificate of authority to transact business in this state to each licensing authority with jurisdiction over a professional service described in the certificate of authority.

1128. Annual Qualification Statement.

(a) *Statement if Required by Licensing Authority.* If required by a rule promulgated by the licensing authority having jurisdiction over a professional service described in the articles of a domestic PLLC or certificate of authority of a foreign PLLC, each such domestic PLLC and each such foreign PLLC that is authorized to transact business in this state shall deliver for filing to each licensing authority having jurisdiction over a professional service described in the domestic PLLC's articles or foreign PLLC's certificate of authority an annual statement of qualification setting forth:

(1) The names and usual business addresses of its members, holders of financial rights (or their equivalent), if any, directors (or their equivalent), if any, managers (or their equivalent), if any, and officers (or their equivalent), if any; and

(2) Information required by rule promulgated by the licensing authority to determine compliance with this chapter and other rules promulgated under it.

(b) *Delivery Date.* The first qualification statement of a domestic or foreign PLLC required under this section must be delivered to the licensing authority between January 1 and April 1 of the year following the adoption of a rule requiring such statements and the calendar year in which the domestic PLLC was formed, professional LLC status was elected for the PLLC, or the foreign PLLC was authorized to transact business in this state, as applicable. Subsequent qualification statements must be delivered to the licensing authority between January 1 and April 1 of the following calendar years.

(c) *No Additional Information.* Any information required by a licensing authority pursuant to this section shall be submitted in the annual statement of qualification, and the licensing authority shall have no authority to require a domestic PLLC to include in its articles filed pursuant to § [201], § [202] and § [1103] of this Act any information other than that which is specifically prescribed by § [201], § [202] and § [1103] of this Act or to require a foreign PLLC to include in its application for certificate of authority filed pursuant to § [904] and § [1124] of this Act or any amendment of such certificate of authority any information other than that which is specifically prescribed by § [904] and § [1124] of this Act.

#### 1129. Rules.

Each licensing authority is empowered to promulgate rules expressly authorized by this chapter if the rules are consistent with the public interest or required by the public health or welfare or by generally recognized standards of professional conduct.

#### 1130. Jurisdiction of Licensing Authority.

This chapter does not restrict the jurisdiction of a licensing authority over individuals rendering a professional service within the jurisdiction of the licensing authority, nor does it affect the interpretation or application of any law pertaining to standards of professional conduct except that, notwithstanding any other provision of this Act, this chapter expressly provides that persons engaged in a professional service are expressly authorized to form or elect professional LLC status for a PLLC in which to conduct their business and limit their liability for the acts of others.

#### 1131. Amendment of Existing Laws and Right to Practice Profession in Other Forms.

Notwithstanding any other provision of this Act, the prior laws of this state with respect to the practice and regulation of professional services rendered by or through a domestic or foreign PLLC and the laws of this state relating to the regulation of professional services are hereby amended and superseded to the extent such laws are inconsistent as to form of organization with the provisions of this Act and are deemed amended to permit the provision of professional services within this state by domestic PLLCs and foreign PLLCs that are authorized to transact business in this state. This chapter does not affect an existing or future right or privilege to render professional services through the use of any other form of entity.

#### 1132. Reservation of Power to Amend or Repeal.

The general assembly has the power to amend or repeal all or part of this chapter at any time, and all domestic and foreign PLLCs that are subject to this chapter are governed by the amendment or repeal.

#### 1133. Applicability; Savings Clause.


The provisions of § [1002] apply to domestic PLLCs, including domestic PLLCs formed under the Prior Act and LLCs formed under the Prior Act for which professional LLC status has been elected under the Prior Act, and foreign PLLCs to the same extent as those provisions apply to other domestic and foreign LLCs.

SECTION 2. This act shall take effect January 1, 2006, the public welfare requiring it.



PASSED: May 16, 2005

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 1<sup>st</sup> day of June 2005

  
PHIL BREDESEN, GOVERNOR